

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRA-D-1090-DB-2012  
Reserved on : 13.05.2019  
Date of decision : 15.05.2019

Dilbagh Singh and another

... Appellants

Versus

State of Haryana

... Respondent

**CORAM:** *HON'BLE MR. JUSTICE RAJIV SHARMA*  
*HON'BLE MR. JUSTICE HARINDER SINGH SIDHU*

Present: Mr.A.P.S. Deol, Senior Advocate  
with Mr.Vishal Rattan Lamba, Advocate  
for the appellants.

Mr. Vishal Garg, Addl.A.G. Haryana.

**RAJIV SHARMA, J.**

This appeal is instituted against the judgment and order dated 13.10.2012 and 16.10.2012 rendered by the Additional Sessions Judge, Bhiwani, in NDPS Act Case No.2 of 2011/2012.

2. Both the appellants along with co-accused Baljeet, Shyama, Rajesh, Raju alias Narender and Prabhu were charged with and tried for offences punishable under Sections 15(c), 27(A) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). The appellants have been convicted and sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,25,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of six months for offence under Section 15(c) of the NDPS Act. Co-accused Baljeet, Shyama, Rajesh, Raju alias Narender

and Prabhu were acquitted. Appellants were also acquitted for the offence under Section 27-A and 29(1) of the NDPS Act.

4. The case of the prosecution in a nutshell is that on 17/18.07.2011 police party headed by ASI Om Parkash comprising of Head Constable Ramphal, EHC Surender and Constable Vikas was present at Police Post Jhuppa Kalan. He received secret information to the effect that Raju, Balraj, Vinod alias Golu were jointly involved in smuggling of poppy husk and cases were already registered against them. They would come in truck bearing registration No.WB23B-4030 which was taken on hire basis from Harish son of Gangadhar. They had purchased poppy husk from Prabhu Dayal son of Tulsi Ram, Thekedar at Chittorgarh in Rajasthan and will come from Chittorgarh via Salasar Churu, Rajgarh, Behal and Jhuppa. They would also be using Scorpio of white colour bearing registration No.HR-24J-1111 driven by Shyama accompanied by Raju, Vinod alias Golu and Balraj. This vehicle was being used as a pilot for the truck and another vehicle Tavera of grey colour bearing registration No.HR-20M-0200 driven by Dilbag alias Gholu accompanied by Bajrang would be behind the truck as escort. If an immediate action is taken, all the three vehicles carrying poppy husk could be apprehended. Report No.22 dated 17.07.2011 was registered at the Police Post and copy of the same was sent to the senior officers through Constable Vikas. SHO, Police Station Siwani was informed on mobile phone. ASI Om Parkash, HC Ramphal and EHC Surender started for Jhuppa road in a private vehicle. When they were present near Bus Stand Matani Behal road, from the side of Behal, Tavera vehicle bearing registration No.HR20M-0200, truck bearing registration No.WB-20B-4030

and Scorpio bearing registration No.HR24J-1111 came. ASI Om Paraksh along with other police officials gave signal to stop the vehicles. The driver of Tavera identified himself as Dilbag and the person accompanying him identified himself as Bajrang. The driver of the truck and conductor managed to run away from the spot taking advantage of darkness. The driver of Scorpio turned back and succeeded in running away from the spot. Tavera and truck were searched in the presence of Balbir Singh, DSP, Headquarter Bhiwani. Four sacks of poppy husk (doda post) were recovered from Tavera vehicle. Two samples of 200 grams each were separated from each sack. The first sack weighed 28 kilograms, second sack weighed 21 kilograms, third sack weighed 22 kilograms and fourth sack weighed 26 kilograms 600 grams. All the parcels were sealed with seal of OP. DSP also affixed his seal 'BS'. The truck contained 74 sacks of poppy husk. These were assigned serial numbers 5 to 78. Two samples of 200 grams were separated from each sack. Samples were converted into parcels. Every sack was sealed with three seals of monogram 'OP'. DSP also affixed his seal 'BS'. Contraband was taken into possession. Written information was sent to the police station through EHC Surrender. Case was registered. Samples were sent to FSL for examination. Investigation was completed. Challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses in support of its case. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The accused also examined two witnesses in their defence. The appellants Bajrang and Dilbag Singh were convicted and sentenced, as noticed hereinabove. Hence the appeal.

vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the judgment and order dated 13.10.2012 and 16.10.2012.

8. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

9. According to FSL report Ex.PD, Papaverine and Meconic Acid were found in all the samples.

10. PW-1A HC Ramphal (It was again numbered as PW-1 by the trial Court. It be read as PW-1A) testified that on 18.07.2011 he along with ASI Om Parkash, EHC Surender and Constable Vikas was present at Police Post Jhuppa. In the meantime, ASI Om Parkash received a secret information to the effect that Raju, Balraj and Vinod were indulging in smuggling of narcotics. The secret informer delivered secret information only to ASI Om Parkash. Thereafter they went to village Matani. A truck came from the side of village Behal. It was intercepted. The occupants of the car managed to run away leaving behind the truck. Thereafter Tavera vehicle was checked. Two persons were sitting in the vehicle. They disclosed their identity. Notice under Section 50 of the NDPS Act was given to them. They opted to be searched before a gazetted officer. DSP, Siwani came. On the direction of DSP, Siwani, investigating officer checked the Tavera vehicle. It contained 4 sacks of poppy husk. Samples were drawn. Samples were converted into parcels. Accused Dilbag and Bajrang made disclosure statements vide Ex.PB and PC. Truck Ex.P83 and Tavera vehicle Ex.P84 were taken into possession at the spot. In his cross-examination, he deposed that they reached bus stand of village Matani at about 11.30 P.M.

No independent witness was summoned. There was no shop or bus shelter. Firstly Tavera vehicle was stopped and thereafter the truck was stopped. One electronic weighing scale was brought. Small packets of cloth were already in the investigating bag of the investigating officer. The mouth of sacks were stitched. Accused Baljeet was arrested on 05.08.2011.

11. PW-4 EHC Ramesh Kumar has led his evidence by filing affidavit Ex.PF. According to the averments in the affidavit, ASI Om Parkash got deposited in the malkhana case property 78 gunny bags of poppy husk and 78 separate parcels each weighing 100 grams along with sample seal. He put the same in Malkhana. Separate parcels of poppy husk were handed over to Constable Vikas for chemical examination at Madhuban.

12. PW-6 HC Gopal Dass deposed that ASI Om Parkash interrogated accused Shyam alias Shyama. His disclosure statement is Ex.PH. He made another disclosure statement Ex.PH/2. Accused Shyama got arrested Rajesh along with his Scorpio. Accused Rajesh made disclosure statement Ex.PH/4. Bajrang also made disclosure statement Ex.PH/6 on 21.07.2011. Accused Baljeet was also interrogated. He made disclosure statement Ex.PH/7. Accused Prabhu was also interrogated. He made disclosure statement Ex.PH/10. Raju alias Mota also made disclosure statement Ex.PJ.

13. PW-7 ASI Om Parkash is material witness. He deposed the manner in which the secret information was received that truck, Tavera and Scorpio were coming from Chittorgarh with contraband. He along with police force went to the spot. Vehicles were intercepted. They checked Tavera. Four sacks of contraband were recovered. Two persons who had

come in truck ran away from the spot. The person driving the Scorpio managed to escape. The occupants of Tavera vehicle namely Dilbag and Bajrang were arrested. They disclosed their identity. Notice under Section 50 of the NDPS Act was issued to them. They gave consent to be searched before a gazetted officer. Gazetted Officer reached the spot. In his presence, Tavera vehicle and truck were searched. Four sacks were found in the Tavera and 74 sacks were found in the truck. All the codal formalities were completed on the spot. He sent intimation Ex.PA to police station for registration of case. Formal FIR Ex.PE was registered. Accused made disclosure statements. In his cross-examination, he deposed that he deposited the case property with MHC at 02.00 P.M. Case property was produced before the Area Magistrate at about 06.00 P.M.

14. PW-8 DSP Balbir Singh deposed that he received a message from Police Control Room, Bhiwani to the effect that ASI Om Parkash had apprehended one Tavera vehicle and one truck containing contraband. He reached the spot. Two vehicles were detained by the police. Accused Dilbag and Bajrang were in custody of the police. In his presence, the vehicles were searched. Four sacks of poppy husk was recovered from Tavera. Samples were drawn. The bulk contraband was also converted into parcels. Seal was put. He also put his seal. Truck was searched. 74 sacks of poppy husk were recovered. Samples were drawn. He put his seal.

15. PW-10 Jaspal Singh deposed that he received a telephonic message from ASI Om Parkash regarding apprehension of two accused along with 78 sacks of poppy husk loaded in truck and Tavera. He reached the spot. Case property was produced before him. He verified the same. He prepared final report. In his cross-examination, he deposed that he received

telephonic message from ASI Om Paraksh at about 10.30 P.M. on 17.07.2011. He recorded a DDR in this respect and for his departure as well.

16. DW-1 Ramesh Kumar testified that Dilbag was driver by profession. He used to drive the vehicle in his area. He booked Tavera of accused Dilbag in the night time. He asked him to come to his house at 2.00 A.M. Dilbag did not come along with Tavera to his house till morning. He along with Rajbir inquired about him. He came to know that accused Dilbag was made to sit in the Police Post Jhuppa Kalan. Dilbag was in custody of police. SHO Om Parkash told him that Dilbag was asked to transport some bags to Police Post Jhuppa Kalan. Dilbag misbehaved with the police. He was made to sit in the police station.

17. DW-2 Baldev deposed that accused Shyama was his nephew. On 16.07.2011 he along with Krishan Sharma went to the police station Tosham to enquire about Shyam Lal. Shyam Lal was detained by the police.

18. PW-7 ASI Om Parkash had received a secret information that three vehicles were coming from Rajasthan side, i.e. one Tavera, one truck and one Scorpio. Truck and Tavera vehicles were intercepted. The occupants of Scorpio managed to take away the Scorpio. From Tavera, four sacks of poppy husk were recovered. All the codal formalities were completed. 74 sacks of poppy husk were recovered from the truck in the presence of PW-8 DSP Balbir Singh. The samples and bulk contraband were deposited in the malkhana. These were also produced before the Illaqa Magistrate. The samples were sent to FSL for examination. PW-10 Jaspal Singh has categorically deposed in his cross-examination that he had received telephonic message from ASI Om Paraksh on 17.07.2011. He recorded the same in DDR before leaving the place. PW-7 ASI Om Parkash

even in his cross-examination has deposed that he was present at Police Post Jhuppa Kalan when he received the secret information. HC Ramphal, EHC Surender and Constable Vikas were also present at the Police Post. The place of occurrence was at a distance of about 8 kilometers from Police Post Jhuppa Kalan. PW-8 Balbir Singh has deposed that he received a message from Police Control Room, Bhiwani to the effect that ASI Om Parkash had apprehended one Tavera vehicle and one truck containing contraband substances. He reached the spot with his staff. Under his supervision, Tavera and truck were searched. PW-5 Hemant Kumar has proved the order Ex.PG rendered by Sh.Balwant Singh, Sub Divisional Judicial Magistrate, Siwani. PW-1A Ramphal has denied that no information was received by the police and all the proceedings were done in the police station to falsely implicate the accused. The information was received at 11.30 PM. Police had reached the spot immediately. In case police had not reached, contraband and accused would have disappeared. It was emergent situation. It was for the appellants to prove prejudice caused to them in case Section 42 of the NDPS Act was not complied with.

19. A Constitution Bench of Supreme Court in ***Karnail Singh vs. State of Haryana, (2009) 8 Supreme Court Cases 539*** has held that in special circumstances and emergent situations when the officer is on the move, and recording of information is not practical prior to search and seizure, and would be detrimental to effectiveness of the search and seizure concerned, the requirement of writing down and conveying information to superior officer may be postponed by a reasonable period which may even be after the search, entry and seizure. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be

decided in each case. Non-compliance with Section 42 may not vitiate the trial if it does not cause any prejudice to the accused. Their Lordships of the Supreme Court have held as under:-

*“35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :*

*(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).*

*(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .*

*(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and*

*seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.*

*(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. 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. 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 a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.*

*36) We answer the reference in the manner aforesaid. Let the appeals be now placed for disposal before the appropriate Bench.”*

20. Their Lordships of the Supreme Court in ***Bahadur Singh vs. State of Haryana, (2010) 4 Supreme Court Cases 445 section 42*** have held that with advancement of technology and availability of high-speed exchange of information, some of the provisions of NDPS Act, including Section 42, have to be read in the changed context. Delay caused in complying with provisions of Section 42 could result in escape of offender or even removal of the contraband. Hence, substantial compliance is sufficient, if the information received was subsequently sent to the superior office. Their Lordships have held as under:-

*“17. It cannot but be noticed that with the advancement of technology and the availability of high speed exchange of information, some of the provisions of the NDPS Act, including Section 42, have to be read in the changed context. Apart from the views expressed in Sajan Abraham's case (supra) that the delay caused in complying with the provisions of Section 42 could result in the escape of the offender or even removal of the contraband, there would be substantial compliance, if the information received were subsequently sent to the superior officer.*

*18. In the instant case, as soon as the investigating officer reached the spot, he sent a wireless message to the Deputy Superintendent of Police, Kurukshetra, who was his immediate higher officer and subsequent to recovery of the contraband, a Ruqa containing all the facts and circumstances of the case was also sent to the Police Station from the spot from where the recovery was made on the basis whereof the First Information Report was registered and copies thereof were sent to*

*the Ilaqa Magistrate and also to the higher police officers. As was held by the High Court, there was, therefore, substantial compliance with the provisions of Section 42 of the NDPS Act and no prejudice was shown to have been caused to the accused on account of non-reduction of secret information into writing and non-sending of the same to the higher officer immediately thereafter.*

*19. Apart from the decision in Sajan Abraham's case (supra), the decision of the Constitution Bench in Karnail Singh's case (supra), has also made it clear that non-compliance with the provisions of Section 42 may not vitiate the trial if it did not cause any prejudice to the accused. Furthermore, whether there is adequate compliance of Section 42 or not is a question of fact to be decided in each case.*

*20. As far as compliance with the provisions of Section 57 of NDPS Act is concerned, as has been indicated earlier, it has been held by this Court that the same was not mandatory, and, in any event, information of the arrest of the petitioner and seizure of the contraband had been duly reported to the local police station on the basis of which the First Information Report had been drawn up.”*

In the instant case, information was received. Senior officer was informed immediately. I.O. went to the spot and nabbed the accused. In case of delay, accused would have escaped. Moreover the appellants have not shown in what manner they were prejudiced.

21. Their Lordships of the Supreme Court in ***Dalel Singh vs. State of Haryana, (2010) 1 Supreme Court Cases 149*** have held that when the officer was on patrol duty and received secret information and conveyed the same to the senior officer through wireless it would amount to substantial

compliance of Section 42 in emergent situations. In case he had not moved quickly in right earnest, appellant-accused would have had opportunity to remove contraband charas and escape from arms of police. Their Lordships have held as under:-

*“8. Learned counsel for the appellant very vehemently urged that there was total non-compliance of Section 42 of the NDPS Act. We do not think that the accused can succeed even on this point in view of the judgment of Constitution Bench of this court rendered in Karnail Singh Vs. State of Haryana 2009(10) SCALE 255 wherein, in paragraph 10, it was held as under:*

*"35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:*

*(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of Section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediately official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).*

*(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be*

*feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.*

*(c) In other words, the compliance with the requirements of Section 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the officer superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.*

*(d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. 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. 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 a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”*

9. *In this backdrop when we see the prosecution case here, it is apparent that the information was received by PW6 Inspector Mahabir Singh when he was not in the police station but was on patrol duty in the town. He immediately, after receipt of the information, informed his superior officer on wireless. There is no doubt that he did not record it in writing but passed on it to his superior ASP Kala Ramachandran by wireless. The fact that the superior officer was informed is deposed to by ASP Kala Ramachandran who appeared as PW5. We have seen her cross-examination which really is totally irrelevant. Similarly, we have gone through the evidence of PW6 Inspector Mahabir Singh. Again, his cross-examination is also redundant cross-examination. Both the witnesses have deposed about the information having been transmitted through wireless and in our opinion would be a substantial compliance of Section 42 of the NDPS Act since the situation was of emergency. Had the*

*police officer not moved right in the earnest, the appellant-accused would have had an opportunity to remove the contraband charas and escaped from the arms of police.”*

22. Section 50 of the NDPS Act was not applicable in the present case for the simple reason that recoveries were effected from Tavera and truck.

23. Their Lordships of the Supreme Court in ***Gulsher Mohammed vs. State of Himachal Pradesh, (2015) 17 Supreme Court Cases 682*** have held that mandatory requirement prescribed under Section 50 is required to be complied with only when search is carried out on body of person. Their Lordships have held as under:-

*“13. We do not find such a legal consequence getting attracted simply because under sub-section (5) of Section 50 a reference has been made to an officer duly authorized under Section 42 in the said sub-section. The said reference has been made to identify such of those officers who were all noted as empowered officers under Section 42(1) solely for the purpose of Section 50 when a search on a person is made and for which purpose due compliance of all other stipulations contained in Section 50 will have to be carried out. In the alternative, the requirement of compliance under Section 42 for effecting a search of the premises are entirely different from the requirements when a search is to be made on the body of a person under Section 50, though the search to be carried out are to be made by the officers duly authorized and specified in Section 42.*

xxx                      xxx                      xxx

15. *In the light of our above conclusion, we do not find any scope even to invoke Section 100 Cr.P.C. as was canvassed by the learned counsel by the learned counsel*

*on behalf of the appellant by relying upon Section 50 which has no application relating to a search of a premises.*

xxx                      xxx                      xxx

18. *The above statements in the evidence of PW2 were more than sufficient to support the case of the prosecution in having made the recoveries from the premises of the appellant, inasmuch as PW2 was not only an independent witness but he was also very close friend of the appellant but yet he came forward with a very fair statement about the contraband materials found in the premises of the appellant which were recovered in his presence and his statement was also truly recorded, which he signed after going through the same and understanding its correctness. However, when he was cross-examined on behalf of the appellant, he made a contradictory version and thereby virtually withdrawing whatever categorical admission he made in the earlier part of his testimony.*

19. *Having noted the manner in which PW2 deposed before the Court and the subsequent expressions contained in the document having been admitted to have been made by him without any hesitation including the correctness of those contents, the documents as well as his attestation on the parcels which contain the samples, the contraband which were duly admitted by him, the contrary statements contained in the latter part of his evidence are all liable to be rejected as containing no truth in it. In fact, when the contents of the documents have been accepted to be true after ascertaining it before the Court, the said part of his evidence alone should carry weight and the latter part of his statement which are made by simply adopting the suggestions put to him at the instance of the appellant will be of no consequence.”*

24. Their Lordships of the Supreme Court in ***Dilbagh Singh vs. State of Punjab, (2017) 11 Supreme Court Cases 290*** have held that Section 50 is not applicable when the recovery of contraband is from the car. Their Lordships have held as under:-

*“11. As the essence of the impeachment is the non-compliance of the enjoinder of Sections 50 and 57 of the Act, for ready reference, these provisions are extracted herein below:*

***“50. Conditions under which search of persons shall be conducted -***

*(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.*

*(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).*

*(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.*

*(4) No female shall be searched by anyone excepting a female.*

*(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting*

*with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).*

*(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.*

\* \* \*

**57. Report of arrest and seizure** - *Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.”*

12. *Whereas the conditions under which, the search as contemplated in Section 50 are limited only to the contingency of search of any person, Section 57 prescribes that whenever any person makes any arrest or seizure under the Act, he would within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. As it is no longer res integra that the application of Section 50 of the Act is comprehended and called for only in the case of search of a person as distinguished from search of any premises etc. having been authoritatively propounded by the two Constitution Bench rulings of this Court in State of Punjab vs. Baldev Singh – (1999) 6 SCC 172 and Vijaysinh Chandubha Jadeja vs. State of Gujarat – (2011) 1 SCC 609, further dilation in this regard, in the attendant facts and*

*circumstances of the case, is considered inessential. This is more so as the contraband in the case in hand had been recovered from inside the car in which the petitioner and the co-accused were travelling at the relevant point of time and not in course of the search of their person. Noticeably, it had also not been the plea of the defence ever that the alleged seizure according to the accused persons had been from their person. In the contextual facts therefore, Section 50 has no application to espouse the cause of the defence.”*

25. Their Lordships of the Supreme Court in ***SK.Raju alias Abdul Haque alias Jagga vs. State of West Bengal, (2018) 9 Supreme Court Cases 708*** have held that when the contraband was recovered from the bag carried by the accused, compliance of Section 50 is not mandatory in such circumstances. Their Lordships have held as under:-

*“7. Section 42 of the Act deals with the power of entry, search, seizure and arrest without warrant or authorization. It reads thus:*

***“42. Power of entry, search, seizure and arrest without warrant or authorisation.—****(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to*

*believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or 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 or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—*

*(a) enter into and search any such building, conveyance or place;*

*(b) in case of resistance, break open any door and remove any obstacle to such entry;*

*(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and*  
*(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:*

*Provided that in respect of holder of a*

*licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:*

*Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, 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.*

*(2) 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.”*

8. *Section 43 of the Act confers powers on the empowered officer to seize a substance and arrest a suspect in a public place. It provides thus:*

***“43. Power of seizure and arrest in public place.***

*— Any officer of any of the departments mentioned in section 42 may—*

*(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of*

*an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;*

*(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.*

*Explanation.— For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”*

*[Emphasis supplied]*

9. We are unable to accept the submission made by the learned counsel for the appellant that Section 42 is attracted to the facts of the present case. In *State of Punjab v Baldev Singh* (“Baldev Singh”), Dr A S Anand, C.J. speaking for a Constitution Bench of this Court, held:

*“10.....The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any Narcotic Drug or Psychotropic Substances in a public*

*place where such possession appears to him to be unlawful.”*

*[Emphasis supplied]*

10. *In Narayanaswamy Ravishankar v Assistant Director of Revenue Intelligence, a three judge Bench of this Court considered 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 and subsequently arresting him. Answering the above question in the negative, the Court held:*

*“5. In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which 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.”*

11. *In Krishna Kanwar (Smt) Alias Thakuraeen v State of Rajasthan, a two judge Bench of this Court considered whether a police officer who had prior information was required to comply with the provisions of Section 42 before seizing contraband and arresting the appellant who was travelling on a motorcycle on the highway. Answering the above question in the negative, the Court held:*

*“16.....Section 42 comprises of two components. One relates to the basis of information i.e.: (i) from personal knowledge, and (ii) information given by person and taken down in writing. The second is that the information must relate to*

*commission of offence punishable under Chapter IV and/or keeping or concealment of document or article in any building, conveyance or enclosed place which may furnish evidence of commission of such offence. Unless both the components exist Section 42 has no application. Subsection (2) mandates, as was noted in Baldev Singh case 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 forthwith send a copy thereof to his immediate official superior. Therefore, sub-section (2) only comes into operation where the officer concerned does the enumerated acts, in case any offence under Chapter IV has been committed or documents etc. are concealed in any building, conveyance or enclosed place. Therefore, the commission of the act or concealment of document etc. must be in any building, conveyance or enclosed place.”*

*[Emphasis supplied]*

*12. An empowered officer under Section 42(1) is obligated to reduce to writing the information received by him, only when an offence punishable under the Act has been committed in any building, conveyance or an enclosed place, or when a document or an article is concealed in a building, conveyance or an enclosed 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. Section 43 is attracted in situations where the seizure and arrest are conducted in a public place, which includes any public conveyance, hotel, shop, or other place intended for use by, or accessible*

*to, the public.*

*13. The appellant was walking along the Picnic Garden Road. He was intercepted and detained immediately by the raiding party in front of Falguni Club, which was not a building, conveyance or an enclosed place. The place of occurrence was accessible to the public and fell within the ambit of the phrase “public place” in the explanation to Section 43. Section 42 had no application.*

*14. The cases relied on by the learned counsel for the appellant will also not apply in the context of the facts before us. In Mansuri, an auto-rickshaw driver was intercepted by police personnel. Four gunny bags of charas were recovered from the auto-rickshaw. The police officer who had prior information about transportation of some narcotic substance, had neither taken down the information before carrying out the seizure and arrest, nor apprised his superior officer. He contended that the action taken by him was under Section 43 and not Section 42. Rejecting the argument of the State, this Court held that compliance with Section 42 was required as the auto-rickshaw was a private vehicle and not a public conveyance as contemplated under Section 43. Similarly, in Jagraj, contraband was recovered from a jeep which was intercepted by police personnel on a public road after receiving prior information. The police officer who had received the information, admitted to not taking it down in writing, contending that Section 43 would be applicable. Rejecting the argument of the State, this Court held that the jeep which was intercepted, was not a public conveyance within the meaning of Section 43 and compliance with Section 42(1) was therefore mandatory. In Holia, Mandrax tablets were recovered from the hotel room of the respondent. The information was not*

*reduced to writing by the officer who had first received the information. The State claimed that compliance with Section 42 was not required as the hotel was a public place. Rejecting the submission of the State, this Court held that while a hotel is a public place, a hotel room inside it is not a public place. This Court held thus:*

*“14. Section 43, on plain reading of the Act, may not attract the rigours of Section 42 thereof. That means that even subjective satisfaction on the part of the authority, as is required under sub-section (1) of Section 42, need not be complied with, only because the place whereat search is to be made is a public place. If Section 43 is to be treated as an exception to Section 42, it is required to be strictly complied with ... It is also possible to contend that where a search is required to be made at a public place which is open to the general public, Section 42 would have no application but it may be another thing to contend that search is being made on prior information and there would be enough time for compliance of reducing the information to writing, informing the same to the superior officer and obtain his permission as also recording the reasons therefore coupled with the fact that the place which is required to be searched is not open to public although situated in a public place as, for example, room of a hotel, whereas hotel is a public place, a room occupied by a guest may not be. He is entitled to his right of privacy. Nobody, even the staff of the hotel, can walk into his room without his permission. Subject to the ordinary activities in regard to maintenance and/or housekeeping of the room, the guest is entitled to maintain his privacy.”*

*[Emphasis supplied]*

*There is hence no substance in the first submission.*

15. *Section 50 of the Act deals with conditions under which search of persons shall be conducted. It states:*

***“50. Conditions under which search of persons shall be conducted.—*** (1) *When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.*

*(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).*

*(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.*

*(4) No female shall be searched by anyone excepting a female.*

*(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of*

*Criminal Procedure, 1973 (2 of 1974).*

*(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”*

*According to Section 50(1), an empowered officer should necessarily inform the suspect about his legal right, if he so requires, to be searched in the presence of a gazetted officer or a magistrate.*

*16. In Vijaysinh Chandubha Jadeja v State of Gujarat (“Vijaysinh”), a Constitution Bench of this Court interpreted Section 50 thus:*

*“20. The mandate of Section 50 is precise and clear, viz. if the person intended to be searched expresses to the authorised officer his desire to be taken to the nearest gazetted officer or the Magistrate, he cannot be searched till the gazetted officer or the Magistrate, as the case may be, directs the authorised officer to do so*

*\*\*\*                      \*\*\*                      \*\*\**

*29. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. 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*

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*31. We are of the opinion that the concept of “substantial compliance” with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez and Prabha Shankar Dubey is neither borne out from the language of Sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case.”*

*17. The principle which emerges from Vijaysinh is that the concept of “substantial compliance” with the requirement of Section 50 is neither in accordance with the law laid down in Baldev Singh, nor can it be construed from its language. [Reference may also be made to the decision of a two judge Bench of this Court in Venkateswarlu]. Therefore, strict compliance with Section 50(1) by the empowered officer is mandatory. Section 50, however, applies only in the case of a search of a person. In Baldev Singh, the Court held*

*“12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises, etc.”*

*In State of Himachal Pradesh v Pawan Kumar (“Pawan Kumar”), a three judge Bench of this Court held that the search of an article which was being carried by a person*

*in his hand, or on his shoulder or head, etc., would not attract Section 50. It was held thus:*

*“11....In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section 50 of the Act*

*\*\*\*                      \*\*\*                      \*\*\**

*16....After the decision in Baldev Singh, this Court has consistently held that Section 50 would only apply to search of a person and not to any bag, article or container, etc. being carried by him.”*

*18. In Parmanand, on a search of the person of the respondent, no substance was found. However, subsequently, opium was recovered from the bag of the respondent. A two judge Bench of this Court considered whether compliance with Section 50(1) was required. This Court held that the empowered officer was required to comply with the requirements of Section 50(1) as the person of the respondent was also searched. [Reference may also be made to the decision of a two judge Bench of this Court in Dilip v State of Madhya Pradesh]. It was held thus:*

*“15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application.”*

*19. Moreover, in the above case, the empowered officer at the time of conducting the search informed the respondent that he could be searched before the nearest Magistrate or before the nearest gazetted officer or*

*before the Superintendent, who was also a part of the raiding party. The Court held that the search of the respondent was not in consonance with the requirements of Section 50(1) as the empowered officer erred in giving the respondent an option of being search before the Superintendent, who was not an independent officer. It was held thus:*

*“19. We also notice that PW 10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before the nearest gazetted officer or before PW 5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW 5 J.S. Negi by PW 10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to the nearest Magistrate or the nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW 10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW 5 J.S. Negi, the Superintendent, who was part of the raiding party. PW 5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW 5 J.S. Negi, the search would have been vitiated or not. But PW 10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of*

*Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW 10 SI Qureshi is vitiated.”*

20. *The question which arises before us is whether Section 50(1) was required to be complied with when charas was recovered only from the bag of the appellant and no charas was found on his person. Further, if the first question is answered in the affirmative, whether the requirements of Section 50 were strictly complied with by PW-2 and PW-4.*

21. *As evidenced by Exhibit-3, a first option was given to the appellant. PW2 informed him that it was his legal right to be searched either in the presence of a magistrate or in the presence of a gazetted officer. The appellant was then asked to give his option by indicating whether he wanted to be searched by a magistrate or a gazetted officer. The appellant indicated that he wanted the search to be carried out in the presence of a gazetted officer. When PW-4 arrived, he was introduced to the detainee as a gazetted officer. As evidenced by Exhibit-4, PW-4 then gave the appellant a second option. He inquired of him again, whether he wanted to be searched in the presence of a gazetted officer or in the presence of a magistrate. The appellant reiterated his desire to be 16 searched in the presence of a gazetted officer. Before the search of the appellant commenced, the gazetted officer asked the appellant whether he wanted to search PW-2 before his own search was carried out by PW-2. The appellant agreed to search PW-2 before the latter carried out his search. On conducting the search, only personal belongings of PW-2 were found by the appellant. On the search of the appellant in the presence of the gazetted officer, a biscuit colour jute bag was recovered from the appellant, and Rs. 2,400/- cash in the denomination of 24 notes of Rs. 100/- each was found in*

*the left pocket of the appellant's trouser. When the bag was opened, a black polythene cover containing nineteen rectangular broken sheets of a blackish / deep brown colour weighing 1.5 kilograms was recovered. The sheets were tested and were found to be charas.*

*22. PW-2 conducted search of the bag of the appellant as well as of the appellant's trousers. Therefore, the search conducted by PW-2 was not only of the bag which the appellant was carrying, but also of the appellant's person. Since the search of the person of the appellant was also involved, Section 50 would be attracted in this case. Accordingly, PW-2 was required to comply with the requirements of Section 50(1). As soon as the search of a person takes place, the requirement of mandatory compliance with Section 50 is attracted, irrespective of whether contraband is recovered from the person of the detainee or not. It was, therefore, imperative for PW-2 to inform the appellant of his legal right to be searched in the presence of either a gazetted officer or a magistrate.*

*17 From Exhibit-3, it can be discerned that the appellant was informed of his legal right to be searched in the presence of a magistrate or a gazetted officer. The appellant opted for the latter alternative. Exhibit-4 is a record of the events after the arrival of PW-4 on the scene. After the arrival of PW-4, the appellant was once again asked by him, whether he wished to be searched in the presence of a gazetted officer or a magistrate. This was the second option which was presented to him. When he reiterated his desire to be searched before a gazetted officer, PW-4 inquired of the appellant whether he wished to search PW-2 before his own search was conducted by PW-2. The appellant agreed to search PW-2. Only the personal belongings of PW-2 were found by the appellant. It was only after this that a search of the appellant was conducted and charas recovered. Before*

*the appellant's search was conducted, both PW2 and PW-4 on different occasions apprised the appellant of his legal right to be searched either in the presence of a gazetted officer or a magistrate. The options given by both PW-2 and PW-4 were unambiguous. Merely because the appellant was given an option of searching PW-2 before the latter conducted his search, would not vitiate the search. In Parmanand, in addition to the option of being searched by the gazetted officer or the magistrate, the detainee was given a 'third' alternative by the empowered officer which was to be searched by an officer who was a part of the raiding team. This was found to be contrary to the intent of Section 50(1). The option given to the appellant of searching PW-2 in the case at hand, before the latter searched the appellant, did not vitiate the process in which a search of the appellant was conducted. The search of 18 the appellant was as a matter of fact conducted in the presence of PW-4, a gazetted officer, in consonance with the voluntary communication made by the appellant to both PW-2 and PW-4. There was strict compliance with the requirements of Section 50(1) as stipulated by this Court in Vijaysinh.*

*23. As we have already held that Section 50 was attracted in the present case, we do not need to decide on the applicability of Namdi to the facts of the present case. We have held that Section 50 was complied with. Having regard to the above position, we do not find any merit in the appeal."*

26. Independent witness could not be joined since nobody was available at that hour. Statement of police officials inspire confidence. Tavera carrying contraband was assigned the role of pilot. Contraband was also carried in the truck followed by Scorpio. Scorpio was following as

escort. The appellants knew from the very beginning that the contraband was being carried in Tavera, truck as well as Scorpio. They were part of criminal conspiracy whereby huge quantity was being smuggled from Rajasthan to Haryana. Appellants were part of larger conspiracy. Even though four sacks were recovered from Tavera but they were not oblivious of the fact that contraband was being carried in truck concealed under maize. Even contraband carried in the vehicle by the appellants was more than commercial quantity. The appellants were in constructive and conscious possession of the contraband even though co-accused had run away from the spot. Statements of DW-1 Ramesh Kumar does not inspire confidence. Statement of DW-2 Baldev is qua Shyam Lal only and has no bearing on this case as far as the case of the appellants is concerned.

27. Accordingly there is no merit in the appeal and the same is dismissed.

28. However before parting with the judgment, it would be apt to notice that drug cartels / syndicates are involved in procurement and distribution of narcotic drugs and psychotropic substances. The nefarious activities carried out by the members of drug cartels / syndicate are having adverse impact on the economy. The drug cartels / syndicates are running parallel economy. The members are also involved in other nefarious activities besides illegal trafficking of drugs. The kingpins running the drugs cartels /syndicates are rarely hauled up as only couriers and peddlers are apprehended. There are stringent provisions in the NDPS Act. However, the fact of the matter is that the drug cartels / syndicates are still operating. The members of drugs cartels / syndicates besides illicit trafficking are also involved in illegal supply of weapons and fake currency.

29. The Parliament has also enacted an Act called “The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988”, (in short 'the Act') to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances. According to aims and objects of the Act, illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy.

30. Section 2(e) defines 'illicit traffic' as under:-

*(e) 'illicit traffic', in relation to narcotic drugs and psychotropic substances, means:*

*(i) cultivating any coca plant or gathering any portion of coca plant;*

*(ii) cultivating the opium poppy or any cannabis plant;*

*(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;*

*(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or*

*(v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),*

*other than those permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985, (61 of 1985), or any rule or order made, or any condition of any licence, term or authorization issued, thereunder and includes:*

*(1) financing, directly or indirectly, any of the  
aforementioned activities;  
(2) abetting or conspiring in the furtherance of or in  
support of doing any of the aforementioned  
activities; and”*

31. Section 3 of the Act empowers the Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specifically empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

However, when any order of detention is made by the State Government or by an officer empowered by a State Government, the State Government is required, within ten days, to forward to the Central Government a report in respect of the order.

A detention order can be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973, under Section 4 of the Act.

32. Section 5 of the Act empowers to regulate place and conditions of detention. It provides that every person in respect of whom a detention order has been made shall be liable:-

a) to be detained in such place and under such conditions  
including conditions as to maintenance, interviews or

communication with others, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

b) to be removed from one place of detention to another place of detention, whether within the same State or in another State by order of the appropriate Government.

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

33. Section 8 of the Act reads as under:-

***8. Powers in relation to absconding persons:-***

*(1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may:*

*(a) make a report in writing of the fact to a Metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;*

*(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply*

*therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.*

*(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under clause (b) of sub-section (1) shall be cognizable.*

34. Section 11 of the Act reads as under:-

***“11. Maximum period of detention***

*The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 do not apply and which has been confirmed under clause (f) of section 9 shall be one year from the date of detention, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 apply and which has been confirmed under clause (f) of section 9, read with sub-section (2) of section 10, shall be two years from the date of detention:*

*Provided that nothing contained in this section shall affect the power of appropriate Government in either case to revoke or modify the detention order at any earlier time.”*

35. It is settled law that the Court ordinarily cannot direct making a particular enactment. However in exceptional cases, the Court can make suggestion to the legislature to enact the law. The illicit trafficking of narcotic drugs and psychotropic substances is carried out in a clandestinely/ secretive manner by the drug cartels / syndicates. These activities pose a serious threat to the health, welfare of the people, and also

causes irreparable damage to the national economy. Their activities are required to be curbed by making extra ordinary provisions.

36. The State of Haryana is directed to invoke the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 by issuing necessary detention orders with respect to any person including a foreigner with a view to preventing him from engaging in illicit traffic of narcotic drugs and psychotropic substances, for the period as prescribed under Section 11 of the Act by sending a report to the Central Government within 10 days of passing of detention order.

37. We also suggest /recommend to the State of Haryana to make special enactment to check effectively nefarious activities of the drugs cartels / syndicates within a reasonable time.

(RAJIV SHARMA)  
JUDGE

(HARINDER SINGH SIDHU)  
JUDGE

May 15, 2019.  
Davinder Kumar

|                             |        |
|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |