(17) Since the amount of compensation has been deposited in the Court, the charge of equal amount of earnest money along with interest @ 6% per annum is created on the said amount till the landowners clear the liability, much less, refund the earnest money as ordered and the same would be lifted, the moment landowners discharge their liability.

(18) It is further made clear that if the landowners have already withdrawn the amount of compensation, then the appellants shall be entitled to seek the execution of this order in accordance with law.

(19) The appeals are allowed and the impugned awards of the Reference Court are hereby set-aside. Decree-sheets be prepared accordingly.

P.S.Bajwa

Before S.S. Saron & S.P. Bangarh, JJ.

INDERJEET SINGH—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CRM No. M-13140 of 2012

January 31, 2014

Narcotics Drugs and Psychotropic Substances Act, 1985 - Ss. 2(xiv), (xi) & (xxiii), 21 & 22 - Drugs and Cosmetics Act, 1940 - Ss. 8, 16, 17, 17A, 17B, 18 and 27 - Drugs and Cosmetics Rules, 1945 - Rules 59(1), 60, 61, 62A, 62B, 62C, 97, 104, 104A & 105 - Narcotics Drugs and Psychotropic Substances Rules - Rl. 65 & 65A - Notification S.O. 826(E) dated 14-11-1985 and notification dated 29-1-1993 - Accused was found in possession of 'manufactured drugs' in terms of section 2(xi) of NDPS Act, but these contained an exception as regard percentage of dosage in drug - Question arose that whether an accused could be tried for an offence under NDPS Act - Petitioner's case was that he could be penalised only under D&C Act - Held that possession of manufactured drugs in contravention of NDPS Act would entail criminal prosecution of offender under stringent provisions of NDPS Act - Drugs which are covered under 'manufactured drugs' under

NDPS Act and are also covered by D&C Act would not mean that offender can be penalized only under D&C Act - It is to be ascertained in each case whether manufactured drug contains permissible limits of percentage of dosage provided for drug.

Held, that

(i) Manufactured drugs are those drugs which are defined in section 2 (xi) of the NDPS Act and have been notified by the Central Government vide notification dated 14-11-1985 and subsequent notification dated 29-1-1993. The possession of such drugs in contravention of the NDPS Act and the NDPS Rules would entail criminal prosecution of the offender under Section 21 of the NDPS Act.

(ii) The mere fact that the drugs which are covered under 'manufactured drugs' under the NDPS Act and the NDPS Rules and psychotropic substances as mentioned in Schedule of the NDPS Act and Schedule I of the NDPS Rules and are also covered by the D&C Act and the 1945 Rules thereunder would not mean that the offender can be penalised only under the D&C Act and the 1945 Rules and not proceeded against the NDPS Act and the NDPS Rules. In case there is a contravention of the NDPS Act and the NDPS Rules, the stringent provisions of the latter can be resorted to.

(iii) A person possession manufactured drugs in terms of the NDPS Act and the NDPS Rules is to strictly adhere to the provisions relating to sale, purchase, transport, carrying, storage, distribution etc. in accordance with the provisions of the D&C Act and the 1945 Rules as also the provisions of the Punjab NDPS Rules 2012.

(iv) For transportation of the 'manufactured drugs' a pass or permit in terms of Rule 18 of the Punjab NDPS Rules 2012 is to be possessed.

(v) It is to be ascertained in each case whether the manufactured drug, the contravention of which is alleged

by a person falls within the permissible limits of the percentage of dosage provided for the drug by the notification dated 14-11-1985 and subsequent notification dated 29-1-1993 issued in exercise of power conferred by section 2(xi)(b) NDPS Act. However, the contravention of manufactured drug or possession of quantity in bulk is to be taken into consideration and not per dosage specially when there is a violation of the D&C Act and the 1945 Rules that is to say they are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization. The possession of quantity in bulk would be an indication that it is not for medicinal or therapeutic use but is sought to be misused by drug addicts and drug traffickers and would be treated as applicable to the entire quantity recovered of anyone or more narcotic drug or psychotropic substance of that particular drug in dosage forms and not just its pure drug content.

(Para 56)

J.S. Arora, Advocate, *for the petitioner* in CRM No. M-13140 of 2012.

P.S. Ahluwalia, Advocate, *for the petitioner* in CRM No. M-1379 of 2013.

Shashikant Gupta, Advocate for L.M. Gulati, Advocate *for the petitioner* in CRM No. M-14461 of 2012.

P.S. Sekhon, Advocate, *for the petitioner* in CRM No. M-20282 of 2012.

D.S. Pheruman, Advocate, R.K. Gupta, Advocate, Parveen Kataria, Advocate and Akshay Jain, Advocate as interveners.

PPS Thethi, Addl. A.G., Punjab in Crl. Misc. Nos. M-13140, 14461 and 20282 of 2012.

S.S. Dhaliwal, Addl. A.G., Punjab in CRM No. M- 1379 of 2013.

S.S. SARON, J.

(1) This order will dispose of references made by the learned Single Judge in ***Inderjeet Singh @ Laddi v. State of Punjab*** CRM No. M- 13140; ***Ravinder Singh @ Rinku v. State of Punjab*** CRM No. M-1379 of 2013; ***Rani v. State of Punjab*** CRM No. M-14461 of 2012 and ***Mohd. Shamshad v. State of Punjab*** CRM No. M-20282 of 2012.

(2) In ***Inderjeet Singh @ Laddi v. State of Punjab*** (Crl. Misc. No. M-13140 of 2012), the petitioner was apprehended with the following 'manufactured drugs' as per the report of the Forensic Science Laboratory ("FSL" - for short):-

(a) 30 Rexcof bottles containing 5.88 gms of codeine.

(b) 1500 Momolit of tablets containing 3.45 gms of diphenoxylate.

(c) 500 Phenotil tablets containing 1.1 gms diphenoxylate.

(d) 150 Parvon Spas capsules containing 9.70 gms of dextropropoxyphene.

(3) It is contended on behalf of the petitioner on the strength of two judgments of this Court in ***Baljit Singh v. State of Punjab(1)*** and ***Manjit Singh v. State of Punjab(2)*** that the substances allegedly recovered from the petitioner being 'manufactured drugs' do not come within the purview of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" - for short) and the petitioner can at best be prosecuted and tried for the offences, if any, under the Drugs and Cosmetics Act, 1940 ("D&C Act" - for short).

(4) On behalf of the State it is contended that the substances recovered from the petitioner or in respect of which there has been a contravention are 'manufactured drugs' covered by the provisions of Section 2 (xi) NDPS Act and in view of the FSL report, their prosecution and trial for committing an offence under the NDPS Act is maintainable.

---

(1) 2003(1) Crl.CC 4

(2) 2011(1) RCR (Crl.) 907

(5) The learned Single Judge after considering the rival contentions found that the question whether such substances/drugs are covered under the NDPS Act or not, or can be dealt with only under the D&C Act has been arising frequently in many cases. The consequences would be completely different if the substances were held to be within the purview of the D&C Act instead of the NDPS Act. The matter was, therefore, referred to a larger bench. Meanwhile, the petitioner was ordered to be released on interim bail to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate, Ludhiana.

(6) In ***Ravinder Singh @ Rinku v. State of Punjab*** (CRM No. M- 1379 of 2013), the petitioner was apprehended with Parvon-Spas capsules. As per the Chemical Examiner's report (Annexure P-2) after chemical examination various ingredients along with quantity found in the recovery that was effected as per analysis report is as follows:-

Dextropropoxyphene Hcl.	Positive
Dicyclomine Hcl.	Positive
Acetaminophen	Positive
Avg. Wt.	0.648 gms
Avg. net content	0.496 gms
Assay for -	
Dextropropoxyphene Hcl.	61.986 mg/cap
Acetaminophen	381.76 mg/cap
Dicyclomine Hcl.	9.535 mg/cap.

(7) The Chemical Examiner in his report opined that as per the observations made by the analyst, the samples contain Dextropropoxyphene Hcl., Acetaminophen, Dicyclomine Hcl. In the Chemical Examiner report (Annexure P-3), the examination was conducted in respect of white coloured round flat uncoated tablet inscribed with Micron on one side and having plain surface on other packed in loose polythene pouch. The contents of the parcels under reference were analyzed separately by Chemical analysis and on the

basis of analysis, the various ingredients along with quantity found present in these had been described as follows as per analysis report:-

Diphenoxylate Hcl.	Positive
Avg. Wt.	0.0741 gms
Assay for -	
Diphenoxylate Hcl.	2.445 mg/Tab

(8) As per observations made by the analyst the sample contained Diphenoxylate Hcl.

(9) In his application for bail it is contended on behalf of the petitioner Ravinder Singh @ Rinku that insofar as the recovery of Dextropropoxyphene and Diphenoxylate is concerned, both of them would fall within the ambit of 'manufactured drugs' as defined in Section 2 (xi) of the NDPS Act. The definition of 'manufactured drug' it is stated would reveal that the Central government can notify any narcotic substance to be a manufactured drug in pursuance of Section 2 (xi) NDPS Act. It is stated that a notification was issued by the Ministry of Finance, which was published in Gazette of India, Extraordinary, Part II, Section 3, Sub Section (ii) dated 14.11.1985 whereby certain narcotic substances and preparation were declared to be manufactured drugs. According to the petitioner Ravinder Singh alias Rinku, a perusal of the said notification would show that Dextropropoxyphene and Diphenoxylate have been declared to be manufactured drugs and their possession would fall within the ambit of Section 21 and not Section 22 NDPS Act. It is submitted that the perusal of the Chemical Examiner's reports (Annexure P2 and Annexure P3) indicate that the quantity of Dextropropoxyphene in the medicines alleged to have been recovered from the petitioner Ravinder Singh alias Rinku is 61.986 mg/capsule, which is less than 135 mg and therefore would come within the exception provided for in the aforesaid notification issued by the Govt, of India. Similarly, the quantity of Diphenoxylate in the medicine alleged to have been recovered at the instance of the petitioner is 2.445 mg/tablet which also comes within the exception under the said notification. The learned Single Judge ordered the case to be listed before a Division Bench along with CRM No. M-13140 of 2012.

(10) In ***Rani v. State of Punjab*** (CRM No. M-14461 of 2012), the petitioner as per prosecution case was apprehended while carrying 2170 Parvon Spas capsules and 900 other capsules having mark of Subhimol. As per Chemical Examiner's Report, the Parvon Spas capsules that were recovered contained the salt Dextropropoxyphene Hcl 74.90 mg and capsules Subhimol contained salt of Dextropropoxyphene Hcl 74.96 mg. It was contended on her behalf that if a calculation of the above said percentage of salt of Dextropropoxyphene Hcl. which is stated to be 74.90 mg is made, the alleged recovery is within the purview of non-commercial. The learned Single Judge referred the matter to a larger Bench in view of the order passed in CRM No. M-13140 of 2012.

(11) In ***Mohd. Shamshad v. State of Punjab*** (CRM No. M-20282 of 2012), the petitioner had been running a Chemists Shop in the name of M/s Bharat Medical Hall situated at village Rurki Kalan, Tehsil Malerkotla, District Sangrur. He had a valid licence No.22983 dated 12.12.2006 which was valid upto 11.12.2011. On 9.12.2011, the said petitioner submitted the renewal fees which was accepted. However, the new licence was yet to be issued. As per the prosecution case, 500 capsules of Parvon Spas were recovered from the said petitioner. According to the petitioner, the same does not come within the purview of the NDPS Act. The drug that has been recovered, it is submitted, contains Paracetamol Dextropropoxyphene Hydrochloride and Dicychlomine Hydrochloride. The same are not mentioned in the list of Narcotic Drugs and Psychotropic substances. Therefore, according to the petitioner Mohd. Shamshad no offence under the NDPS Act is made out in this case.

(12) In the reply filed by way of affidavit Sh. Bimal Kumar PPS, Deputy Superintendent of Police, Sub Division, Malerkotla, District Sangrur in ***Mohd. Shamsad's case*** *(supra)* it is stated that though the petitioner has a licence, however, he has no right to sell intoxicant substance in an open public place. Two bottles of liquid intoxicating substance and 500 capsules of Parvon Spas were recovered from the possession of the petitioner Mohd. Shamsad in the area of Kuti Road Mandir, Malerkotla in the jurisdiction of Malerkotla. In terms of the report dated 3.10.2012 of the Assistant Director (Toxicology), FSL, Punjab, the ingredients of recovered liquid intoxicant substance was

reported to be Codeine Phosphate 5.6 mg/5ml and the capsules were reported to be Dextropropoxyphene Hydrochloride 64.8 mg/capsule and these salts are mentioned at Sub-Clauses (viia) and (xxiiia) of Section 2 of the NDPS Act at Serial Nos. 28 and 33 respectively of the Table specifying small quantity and commercial quantity in the NDPS Act as has been issued by the Central Government vide notification dated 19.10.2001. The report of the Chemical Examiner has been attached as Annexure R-l. The learned Single Judge ordered the case to be listed with CRM No. M-13140 of 2012 and in the meantime, the petitioner was ordered to be released on interim bail.

(13) A perusal of the order dated 6.9.2012 passed in the case of ***Inderjeet Singh @ Laddi*** *(supra)* shows that it was contended by the learned counsel for the petitioner in the said case that "manufactured drugs" do not come within the purview of the NDPS Act and the petitioner can at the most be prosecuted only under the Drugs and Cosmetics Act and not under the NDPS Act. In any case he can be prosecuted only under Section 21 and not under Section 22 of the NDPS Act.

(14) Learned Counsel appearing for the petitioners have inter alia primarily contended that in respect of recoveries from an accused in respect of 'manufactured drugs', an accused is not liable to be prosecuted under the NDPS Act. This is more so for the reason that certain 'manufactured drugs' were declared as 'narcotic drugs' by notification of the Central Government vide notification dated 14.11.1985 in which 88 drugs were declared as 'narcotic drugs', besides, vide notification dated 29.1.1993, 17 more drugs were notified as 'manufactured drugs'. However, these notifications contain various exceptions and in case the 'manufactured drug' in respect of which contravention is alleged but which falls within the exceptions then the case would not come within the purview of the NDPS Act. Therefore, it is submitted that the drugs in respect of which exceptions have been made in the notifications afore-stated, a prosecution cannot be launched under the NDPS Act. It is submitted that in terms of Rule 97 of the Drugs and Cosmetics Rules 1945 ("1945 Rules" - for short), labelling of medicines is to be done according to the contents of the medicine and the Schedule under which

it falls as is mentioned therein. If any drug for example mentioned in Schedule 'H' of the 1945 Rules is found without labelling, then the same is at the most liable to be tried only under the D&C Act and the 1945 Rules. Besides, if a person is found in possession of any of the drugs mentioned in Schedule 'H' of 1945 Rules, as well as in the notifications dated 4.11.1985 and 29.1.1993, which fall within any of the exceptions mentioned therein then these are also liable to be tried under the D&C Act only. This, it is submitted, is the combined effect of reading Sections 16, 17, 17-A, 17-B and 18 of the D&C Act and Rules 97, 104, 104-A and 105 of the 1945 Rules, which provide for standards to be maintained under the D&C Act and violation thereof is an offence under Section 18 of the D&C Act. There is no provision under the NDPS Act which prescribes for such an offence to be tried under the said Act. It is submitted that if any drug/psychotropic substance recovered from any unauthorized person and is covered by Schedule I of the Narcotic Drugs and Psychotropic Substances Rules 1985 (as amended) ("NDPS Rules" - for short), then it is to be tried under the NDPS Act and if such drug and psychotropic substance is not covered by Schedule I of the NDPS Rules as provided under Rule 64 of the NDPS Rules then it is liable to be tried under the D&C Act.

(15) In response, learned State counsel have submitted that the menace of drugs is so rampant in this part of the country that it is to be curbed with a heavy hand. It is submitted that the provision of the NDPS Act and the NDPS Rules, besides, the D&C Act and the 1945 Rules have only provided the procedure for trying the offences. It is submitted that there may be overlapping of certain drugs under the D&C Act and the 1945 Rules as also the NDPS Act and the NDPS Rules, however, the same is inconsequential as it is for the State to prosecute the offender in accordance with law and if a harsher provision under the NDPS Act and NDPS Rules is resorted to in respect of drugs which fall under the NDPS Act, the same is not to be nullified or the trial declared illegal merely because a harsher provision has been followed. In any case it is submitted that the quantity of the manufactured drugs of which there has been a contravention is to be taken in bulk and not on the basis of the dosage of the drugs per capsule. Even if the contents of the offending drug fall within the exception then the same is to be taken in respect of the entire

contraband of which there has been a contravention or has been recovered being carried unauthorizedly.

(16) We have given our thoughtful considerations to the matter. The question that arises for consideration is whether an accused can be tried for an offence under the NDPS Act in case he is found in possession of 'manufactured drugs' which fall in the definition of 'manufactured drug' in terms of Section 2 (xi) of the NDPS Act and has been notified as such by notifications dated 14.11.1985 and 29.1.1993 as 'manufactured drugs', but contain an exception as regards the percentage of dosage in the drug.

(17) In order to consider the said issue, the definitions of 'narcotic drug, 'manufactured drug' and 'psychotropic substances' as defined in Section 2 (xiv), (xi) and (xxiii) of the NDPS Act may be noticed which read as under:-

> *"(xiv) "narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods;"*

(18) A perusal of the above shows that coca leaf, cannabis (hemp), opium, poppy straw and including manufactured goods are included in the definition of 'narcotic drug'.

> *"(xi) "manufactured drug" means–*
>
> *(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;*
>
> *(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a "manufactured drug;" (emphasis added).*

(19) Therefore, the Central Government may by notification in the official Gazette, declare any other narcotic substance or preparation to be a 'manufactured drug'.

"(xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;"

(20) Psychotropic substance has been defined to mean any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule to the NDPS Act.

(21) In terms of clause (b) of Section 2 (xi) NDPS Act relating to 'manufactured drug', any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any international convention, by notification in the official Gazette, declare to be a manufactured drug, are to be considered as such, that is, as manufactured drug. The Ministry of Finance, Department of Revenue, has published notification S.O. 826 (E) dated 14.11.1985 in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii). The said notification has been issued in exercise of power conferred by sub clause (b) of clause (xi) of Section 2 NDPS Act, in terms of which the Central Government has declared the narcotic substances and preparations mentioned therein to be "manufactured drug". Insofar as the drugs mentioned in the present cases are concerned, it may be noticed that in the case of Inderjeet Singh @ Laddi (CRM No. M-13140 of 2012), 30 Rexcof bottles containing 5.88 gms of codeine; 1500 Momolit of tablets containing 3.45 gms of Diphenoxylate; 500 Phenotil tablets containing 1.1 gms Diphenoxylate and 150 Parvon Spas capsules containing 9.70 gms of Dextropropoxyphene were recovered. The various drugs that are provided for under the D&.C Act and the 1945 Rules are also provided in the NDPS Act and therefore, there is a somewhat overlapping of the same. The D&.C Act was enacted in 1940. The Second Schedule of the D&C Act prescribes the standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale or distributed. Chapter III of the D&C Act relates to 'Import of Drugs and Cosmetics'. Section 8 thereof relates to 'Standards of Quality.' It is provided in terms of Section 8 (1) (a) of the D&C Act that for the

purposes of Chapter III, the expression 'standard quality' means in relation to a drug, that the drug complies with the standard set out in the Second Schedule. Besides, Chapter IV of the D&C Act relates to 'Manufacture, Sale and Distribution of Drugs and Cosmetics.' In terms of Section 16 (1) (a) of the D&C Act that for the purposes of Chapter IV, the expression 'standard quality' means in relation to a drug, that the drug complies with the standard set out in the Second Schedule. The object of the said D&C Act is to regulate the import, manufacture, distribution and sale of drugs and cosmetics. The basic object is of a regulatory nature for the regulation of import, manufacture, distribution and sale of drugs and cosmetics. The D&C Act provides for penal consequences in respect of certain violations of the said Act and the 1945 Rules. Section 27 of the D&C Act provides for penalty for manufacture, sale etc. of drugs in contravention of Chapter IV. Section 27A provides for penalty for manufacture, sale etc. of cosmetics in contravention of Chapter IV. Section 28 provides for penalty for non-disclosure of the name of the manufacturer etc. Section 28A provides for penalty for not keeping documents etc. and for non-disclosure of information. Section 28B provides penalty for manufacture etc. of drugs or cosmetics in contravention of Section 26A which relates to the power of Central Government to prohibit manufacture etc. of drugs in public interest. Section 29 provides for penalty for use of Government Analyst's Report for advertising. Section 30 relates to penalty for subsequent offences. Section 32 deals with cognizance of offences. Section 32B relates to compounding of certain offences. The violation of the 1945 Rules, therefore, entails penalty in terms of aforesaid provisions. As against this, the NDPS Act is an act to consolidate and amend the law relating to narcotic drugs to make it comprehensive, besides, provide for stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith. The NDPS Act provides for stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The Schedule with reference

to clause (xxiii) of Section 2 NDPS Act mentions various psychotropic substance which include alprazolam at serial No.30, chlordiazepoxide at serial No.36, delorazepam at serial No.42 and various others, besides, salts and preparations of the drugs mentioned therein. In the NDPS Rules, Chapter VII relates to psychotropic substances.

(22) Rules 64, 65 and 65A of the NDPS Rules read as under:-

"64. ***General prohibition.***—*No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule I.*

65. ***Manufacture of psychotropic substances.***—*(1) Subject to the provisions of sub-rule (2), the manufacture of any of the psychotropic substances other than those specified in Schedule I shall be in accordance with the conditions of a licence granted under the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 1945 Rules) framed under the Drugs and Cosmetics Act, 1940 (23 of 1940), by an authority in charge of Drugs Control in a State appointed by the State Government in this behalf:*

Provided that the authority in charge of drug control in a State referred to above may issue a licence to manufacture a psychotropic substance specified in Schedule III for the purpose of export only;

(2) The authority in charge of drugs control in a State (hereinafter referred to as the Licensing Authority) shall consult the Drugs Controller (India) in regard to the assessed annual requirements of each of the psychotropic substances in bulk form referred to in sub-rule (1) in the country and taking into account the requirement of such psychotropic substances in the State, the quantity of such substance required for supply to other manufacturers outside the State and the quantity of such substance required for reasonable inventory to be held by a manufacturer, shall specify, by order, the limit of the quantity of such substance which may be manufactured by the manufacturer in the State.

(3) The quantity of the said psychotropic substance which may be manufactured by a licensee in an year shall be intimated by the Licencing Authority to the licensee at the time of issuing the licence:

Provided that nothing contained in this rule shall apply in case the psychotropic substances specified in Schedule I are manufactured, possessed, transported, imported inter-State, exported inter-State, sold, purchased, consumed or used subject to other provisions of this Chapter which applies to psychotropic substances which are not included in Schedule I and for the purposes mentioned in Chapter VII A:

Provided further that the authority in charge of the drug control in a State referred to in sub-Rule (2) of Rule 65 shall consult the Narcotics Commissioner before issuing a licence under Rule 65 in respect of psychotropic substances included in Schedule I [and Schedule III]

65A. ***Sale, purchase, consumption or use of psychotropic substances.****—No person shall sell, purchase, consume or use any psychotropic substance except in accordance with the Drugs and Cosmetics Rules, 1945."*

(23) In terms of Rule 64 of the NDPS Rules, no person is to manufacture, possess, transport, import inter-State, export inter- State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule I of the NDPS Rules. Rule 65 relates to manufacture of psychotropic substances and it is provided in sub- Rule (1) that manufacture of any of the psychotropic substances other than those specified in Schedule I of the NDPS Rules shall be in accordance with the conditions of a licence granted under the 1945 Rules, by an authority in charge of Drugs Control in a State appointed by the State Government in this behalf. In terms of sub-Rule (2) of Rule 65 of the NDPS Rules, the authority in charge of drugs control in a State that is the Licensing Authority is to consult the Drugs Controller (India) in regard to the assessed annual requirements of each of the psychotropic substances in bulk form referred to in sub- Rule (1) in the country and taking into account the requirement of such psychotropic substances in the State, the

quantity of such substance required for supply to other manufacturers outside the State and the quantity of such substance required for reasonable inventory to be held by a manufacturer, shall specify, by order, the limit of the quantity of such substance which may be manufactured by the manufacturer in the State. In terms of Rule 65A of the NDPS Rules, no person is to sell, purchase, consume or use of psychotropic substance except in accordance with the 1945 Rules. Schedule I of the NDPS Rules referred to in Rule 64 provides for various narcotic drugs and psychotropic substances. The provisions of the NDPS Act and the NDPS Rules as also the D&C Act and the 1945 Rules show that there is overlapping of drugs of various types.

(24) In terms of the afore-referred notification dated 14.11.1985, 88 drugs have been notified and 10 of the drugs provide for some kind of exceptions which are mentioned at serial Nos. 16, 35, 36, 37, 48, 58, 70, 76, 83 and 87 which read as under:-

> *"(16) Preparations made from the extract or tincture of Indian Hemp, except those which are capable only of external use.*
>
> *(35) Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug/per dosage unit and with concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice.*
>
> *(36) Dihydrocodine and Acetyldihydrocodeine, other derivatives of Dihydrocodeine and their salts such as, Paracodine and Acetyl Codone and the like, all dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more than 100 miligrames of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice.*
>
> *(37) Beta-4 - Merphylinylethylmorphine (also known as Homocodeine, Hybernil, Pholcodine and the like) and its salts;*

and dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more then 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice.

(48) Norcodeine and its salts; all dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice.

(58) Ethyl l-(3.Cyano-3, 3-diphenylpropyl)-4- phenylpiperidine -4- carboxylic acid ethyl ester (the international non-proprietary name of which is Diphenoxylate), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations of diphenoxylate containing, per dosage unit, not more than 25 mg. of diphenoxylate calculated as base, and a quantity of atrophine sulphate equivalent to at least one per cent of the dose of disphenoxylate.

(70) 6- nicotinylcodeine (the international non- proprietary name of which is Nicocodine) and its salts, all dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparation and which have been established in therapeutic practice.

(76) 6- nicotinylcodeine (the international non- proprietary name of which is Nicocodine) and its salts, all dilutions and preparations, except those which are compounded with one or more than ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparation and which have been established in therapeutic practice.

(83) l-(3-cyano-3, 3-diphenylpropyl) 4-phenylisonin pecotic acid (otherwise known as Defenoxine or Diphenoxylic acid) and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except any preparation of Difenoxine containing, perdosage unit, a maximum of 0.5 milligrams of difenoxine calculated as base and a quantity of atropine sulphate equal to at least 5 per cent of the quantity of difenoxine, calculated as base, which is present in the mixture.

(87) (+)- 4 - dimethylamino -1, 2-diphenyl-3- methyl-2-butanol propionate, (the international non- proprietary name of which is Dextropropoxyphene), and its salts, preparations, admixturtes, extracts and other substances containing any of these drugs, except preparations for oral use containing not more than 135 milligrams of Dextropropoxyphene base per dosage unit or with a concentration of not more than 2.5 per cent in undivided unit or with a concentration of not more than 2.5 per cent in undivided preparations, provided that such preparations do not contain any substances controlled under the Convention on Psychotropic Substances, 1971.

(25) Thereafter, the Central Government vide notification dated 29.1.1993 has notified 17 more drugs as "manufactured drugs". In all 105 drugs have been notified as "manufactured drugs" by the Central Government. Most of the drugs that have been notified by the Central Government as "manufactured drugs" are covered under Scheduled 'H' of the 1945 Rules. Section 3 (b) of the Drugs and Cosmetics Act defines 'drug' as follows:-

"(b) "drug" includes–

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii) such substances (other than food) intended to affect the structure of any function of the human body or intended to be used for the destruction of [vermin] or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;

(iii) all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board;

(26) The Central Government in terms of the 1945 Rules has conferred powers on the State Government to grant licences. Part VI of the 1945 Rules provides for sale of drugs other than homeopathic medicines. Rule 59 (1) of the 1945 Rules envisages that the State Government shall appoint licensing authorities for the purpose of this part for such areas as may be specified. Sub-Rule (2) of Rule 59 provides for grant or renewal of a licence to sell, stock, exhibit or offer for sale or distribute drugs, other than those included in Schedule 'X' of the 1945 Rules, which relates to special drugs for import licenses, shall be made in Form 19 or Form 19A, as the case may be, or in the case of drugs included in Schedule 'X' shall be made in Form 19 C to the licensing authority. Rule 60 of the 1945 Rules envisages that a licensing authority may with the approval of the State Government by an order in writing delegate the power to sign licences and such other powers as may be specified in the order to any other person under his control. Rule 61 of the 1945 Rules provides for forms of licences to sell drugs. Rule 62 relates to sale at more than one place. Rule 62A relates to restricted licences in Forms 20A and 21A. Rule 62B relates to conditions to be satisfied before a licence in Form 20A or Form 21A is granted. Rule 62C relates to application for licence to sell drugs by wholesale or to distribute the same from a motor vehicle. Rule 62D relates to Form of

licences to sell drugs by wholesale or distribute drugs from a motor vehicle. Rule 63 relates to duration of licence. Rule 63A relates to certificate of renewal of a sale licence and Rule 63B relates to certificate of renewal of licence. Rule 64 relates to conditions to be satisfied before a licence in Form 20, 20B, 20F, 20G, 21 and 21B is granted or renewed. Rule 65 relates to condition of licences. Rule 65A deals with additional information to be furnished by an applicant for licence or a licensee to the licensing authority. Rule 66 deals with cancellation and suspension of licences. Rule 66A deals with procedure for disposal of drugs in the event of cancellation of licence. The said Rules fall under Part VI of the 1945 Rules, the powers in respect of which are conferred on the State Government.

(27) In terms of Section 26A of the D&C Act, the Central Government has power to prohibit manufacture etc. of drug and cosmetic in public interest. It is provided therein that without prejudice to any other provision contained in this Chapter i.e. Chapter IV, if the Central Government is satisfied, that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, prohibit the manufacture, sale or distribution of such drug or cosmetic. In terms of Section 26B of the D&.C Act, the Central Government has the power to regulate or restrict, manufacture etc. of drugs in public interest. It is provided that without prejudice to any other provision contained in this Chapter i.e. Chapter IV, if the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the official gazette, regulate or restrict the manufacture, sale or distribution of such drug.

(28) The licences that are issued to the manufacturers and to other various persons to sell, stock, exhibit, offer for sale or distribute the drugs other than the drugs mentioned in Scheduled 'C', 'C (1)' and 'X', which

are issued in Forms 20, 20A and 20B of the 1945 Rules. Rule 97 falls under Part IX of the 1945 Rules which deals with labelling and packing of drugs other than homeopathic medicines. In terms of said Rule 97, the container of a medicine for internal use shall contain the particulars as mentioned therein. Rule 97 (1) of the 1945 Rules reads as under:-

> **"97. *Labelling of medicines.*—***(1)*** *The container of a medicine for internal use shall –*
>
> *(a) if it contains a substance specified in Schedule G, be labelled with the words 'Caution: it is dangerous to take this preparation except under medical supervision' - conspicuously printed and surrounded by a line within which there shall be no other words;*
>
> *(b) if it contains a substance specified in Schedule H be labelled with the symbol Rx and conspicuously displayed on the left top corner of the label and be also labelled with the following words:-*
>
> *'Schedule H drug - Warning : To be sold by retail on the prescription of a Registered Medical Practitioner only';*
>
> *(c) if it contains a substance specified in Schedule H and comes within the purview of the Narcotic Drugs and Psychotropic substance Act, 1985 (61 of 1985) be labelled with the symbols NRx which shall be in red and conspicuously displayed on the left top corner of the label, and be also labelled with the following words:-*
>
> *'Schedule H drug - Warning : To be sold by retail on the prescription of a Registered Medical Practitioner only';*
>
> *(d) if it contains a substance specified in Schedule X, be labelled with the symbol XRx which shall be in red conspicuously displayed on the left top corner of the label, and be also labelled with the following words:-*

'Schedule X drug - Warning : To be sold by retail on the prescription of a Registered Medical Practitioner only';"

(29) The 1945 Rules, therefore, provide for various drugs which are included in Schedules 'C', 'C (1)', "H" and 'X'. Schedule 'C relates to biological and special products. Schedule 'C (1)' relates to other special products which includes vitamins and preparations containing vitamins not in a form to be administered parenterally. Liver extract and preparations containing liver extract not in a form to be administered parenterally. Vaccine not in a form to be administered parenterally. Antibiotics and preparations thereof not in a form to be administered parenterally etc. Schedule "H" relates to the prescription of drugs and is referable to Rules 65 and 97 of the 1945 Rules which have been reproduced above i.e. 'condition of licence' and 'labelling of medicines.'

(30) As already noticed some psychotropic substances and Schedule 'H' drugs are overlapping. The following psychotropic substances at serial numbers in the Schedule of NDPS Act have also been mentioned in Schedule 'H' of the 1945 Rules:-

Sr. No. of Psychotropic Substance		**Sr. No. of Drug in Schedule H**	
30	Alprazolam	15	Alprazolam
36	Chlordiazepoxide	105	Chlordiazepoxide
43	Diazepam	147	Diazepam
50	Flurazepam	207	Flurazepam
56	Lorazepam	294	Lorazepam
64	Nitrazepam	360	Nitrazepam
66	Oxazepam	371	Oxazepam
69	Phenobarbital	396	Phenobarbital

(31) In Schedule 'H' of the 1945 Rules, the drugs in respect of which there has been misuse by bulk sale for purposes other than medicinal or therapeutic use are mostly, codeine at serial No.132,

Dextropropoxyphene at serial No. 146 and Diphenoxylate its salt at serial No. 156 are included.

(32) The drug Dextropropoxyphene Hcl was found in the case of Ravinder Singh alias Rinku v. State of Punjab (CRM No. M-1379 of 2013). At serial No.87 of the notification dated 14.11.1985, the drug (+)-4-dimethylamino-l, 2-diphenyl-3-methyl-2-butanon propionate (the international non-proprietary name of which is Dextropropoxyphene), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations for oral use containing not more than 135 milligrammes of Dextropropoxyphene base per dosage unit or with a concentration of not more than 2.5 per cent in undivided preparations, provided that such preparations do not contain any substances controlled under the Convention of Psychotropic Substances, 1971. Therefore, in terms of notification dated 14.11.1985, Dextropropoxyphene is a drug, which has been notified as a manufactured drug though with a certain exception in terms of Section 2 (xi) (b) of the NDPS Act and is also a drug in Schedule 'H' of the 1945 Rules.

(33) Similarly, in the case of ***Rani v. State of Punjab*** (CRM No. M-14461 of 2012) 2170 Parvon Spas capsules and 900 other capsules having mark of Subhimol were recovered. As per the Chemical Examiner's Report, the Parvon Spas capsules contained salt Dextropropoxyphene Hcl 74.90 mg and capsules Subhimol contained salt of Dextropropoxyphene Hcl 74.96 mg. In ***Mohd. Shamshad v. State of Punjab*** (CRM No. M-20282 of 2012), 500 capsules of Parvon Spas were recovered which as per the Chemical Examiner's report contained Dextropropoxyphene Hcl. Mostly the manufactured drugs in respect of which there is a contravention contain Dextropropoxyphene, Codeine and these according to the learned counsel for the petitioners are not 'manufactured drugs' so as to come within the purview of the NDPS Act. However, in terms of notification dated 14.11.1985 these are specifically mentioned as 'manufactured drugs' and contravention of these would be an offence under Section 21 of the NDPS Act, which relates to punishment for contravention in relation to manufactured drugs and preparations; though these may also be an offence under the D&.C Act and the 1945 Rules. The question that these provide for exception would not be of much consequence as these are carried in a

bulk form and in such a manner that they are not intended to be used for medicinal purposes but are intended to be used for intoxication and getting a stimulating effect. These are mostly used as sedatives to go into a trance. Besides, when these are carried in a bulk form without proper authorization or licence, then these would fall within the violations provided for under the NDPS Act and the NDPS Rules. The questions of these being within the exception provided for per dose usage would be inapplicable especially when there is no proper authorization or licence. It may be noticed that Section 21 NDPS Act which relates to punishment for contravention in relation to manufactured drugs and preparations provides for different punishments in respect of contravention of any provisions of the NDPS Act or any Rule or order made or conditions of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug depending upon the quantity of which there has been a contravention, that is, small quantity, involving quantity lesser than commercial quantity but greater than small quantity and involving commercial quantity. Section 21 of the NDPS Act reads as under:-

> **"21.** ***Punishment for contravention in relation to manufactured drugs and preparation.—****Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,-*
>
> *(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;*
>
> *(b) Where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;*

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

(34) The Central Government has specified 'small quantity' and 'commercial quantity' of drugs which is with reference to clause (viia) and (xxiiia) of Section 2 of the NDPS Act in a tabulated form vide notification dated 19.10.2001. Clause (viia) and (xxiiia) of the NDPS Act define; 'commercial quantity' and 'small quantity' as follows:-

"(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette."

(35) The table specifying 'small quantity' and 'commercial quantity' of narcotic drugs and psychotropic substances vide notification dated 19.10.2001 contains horizontal columns from (1) to (6) mentioning the serial number, name of narcotic drug and psychotropic substance, other non-proprietary name, chemical name, small quantity (in grams) and commercial quantity (in grams/kilograms) respectively. The Central Government has thereafter issued notification dated 18.11.2009 so as to add Note 4 after Note 3 to the table specifying 'small quantity' and 'commercial quantity' of narcotic drugs and psychotropic substances in terms of notification dated 19.10.2001. The said notification dated 18.11.2009 reads as under :-

Notifications, New Delhi, the 18th November, 2009 S.O. 2941 (E).- In exercise of the powers conferred by clause (vii a) and (xxiii a) of Section 2 of the Narcotic Drugs and Psychotropic

Substance Act, 1985 (61 of 1985) the Central Government, hereby makes the following amendment in the Notification S.O. 1055 (E), dated 19th October, 2001 namely:-

In the Table at the end after Note 3, the following Note shall be inserted, namely:-

"(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."

(36) The Central Government, therefore, by notification dated 19.10.2001 has specified 'small quantity' and 'commercial quantity' of various narcotic drugs and psychotropic substances by a table. Notification dated 18.11.2009 has been issued by the Central Government, which mentions that quantities shown in column 5 that relates to 'small quantity' and column 6 that relates to 'commercial quantity' of the table relating to respective drugs shown in column 2 that relates to the name of narcotic drug and psychotropic substance, is to apply to the entire mixture or any solution or any one or more of narcotic drugs or psychotropic substances of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure drug content. The intention of the said notification is to prevent and prohibit the use of narcotic drugs and psychotropic substances wherever there is a misuse of the said drugs for other than medicinal or therapeutic use. As has already been noticed various 'manufactured drugs' have been notified vide notifications dated 14.11.1985 and 29.1.1993. Section 21 of the NDPS Act provides for punishment for contravention in relation to manufactured drugs and preparations. The punishment prescribed is with reference to the quantity possessed. Therefore, the punishment which an offender is liable to be inflicted with in case he contravenes the provisions of Section 21 of the NDPS Act is dependent on the contravention of the quantity of drug that is involved. For purpose

of determining the quantity as to whether it is small quantity, lesser than commercial quantity but greater than small quantity or commercial quantity is to be determined with reference to the notification providing a table as afore-mentioned specifying small quantity and commercial quantity to which Note 4 has been added vide notification dated 18.11.2009 mentioning therein that the quantity whether it is small quantity or commercial quantity relating to the drugs shown in column 2 is to apply to the entire mixture or any solution or any one or more narcotic drug or psychotropic substance of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure content.

(37) The manufactured drugs of which there has been a contravention in the present cases have been sold, purchased, distributed, stored, transported, carried etc. in a bulk form and mostly these are without proper licences or authorizations. In respect of such drugs which are carried in bulk form, the notification dated 18.11.2009 would apply and the question that these drugs contain an exception would not be applicable as the exceptions would apply when the drugs are for medicinal or therapeutic use. Besides, the quantity of manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words, the mere dosage of the manufactured drug in one capsule is not to be considered but the dosage in the number of capsules together is to be considered for the purpose of determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substances and preparations as mentioned therein to be manufactured drugs. Moreover, in case of contravention of Section 21 NDPS Act relating to manufactured drugs, Note 4 of the notification 18.11.2009 would apply that is to say that the quantity in respect of which there is a contravention is 'small quantity', 'lesser than commercial quantity but greater than small quantity' or 'commercial quantity' is to 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 etc. wherever existence of such substance is possible and not just its pure drug content. Therefore, the question of exceptions being provided in respect of drugs at serial Nos. 16, 35, 36, 37, 48, 58, 70, 76, 83 and 87 of the notification dated

14.11.1985 is inconsequential when these drugs are carried in a bulk form and the entire quantity of the bulk is to be taken into consideration and not per dosage specially when these are carried in violation of the D&C Act and the 1945 Rules that is to say are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization.

(38) Similarly there are certain 'psychotropic substances' which have been mentioned in the Schedule of the NDPS Act and which are used for medicinal purposes also. The said 'psychotropic substances' can be manufactured in accordance with the conditions of a licence granted under the 1945 Rules. Except those substances which are not mentioned in the Schedule 'I' of the 1945 Rules for which purpose a licence can be granted under the said 1945 Rules, the others that is without licence or authorization would entail the violation of the NDPS Act and the NDPS Rules which would make out an offence under the said latter provisions. Therefore, the possession of a 'manufactured drug' which has been notified in terms of notifications dated 14.11.1985 and 29.1.1993 or 'psychotropic substances' and which are mentioned in Schedule 1 of the NDPS Act would entail prosecution either under the NDPS Act or the D&C Act. The fact that the prosecution has enforced a harsher provision of the NDPS Act than the normal provision of the D&.C Act would not be of any consequence or significance.

(39) In ***Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and others(3)*** (Seven Judges Bench), the Hon'ble Supreme Court considered the case relating to the legality of the certain provisions of Chapter V-A of the Bombay Municipal Corporation Act and the Bombay Government Premises (Eviction) Act 1955. Chapter V-A was introduced in the Bombay Municipal Act 1888 by Maharashtra Act 14 of 1961. The said Chapter V-A contained Sections 105-A and 105-B. According to the provisions of those Sections, the Commissioner in relation to premises belonging to or vesting in, or taken on lease by the Corporation and the General Manager of the Bombay Electric Supply and Transport Undertaking in relation to premises of the Corporation which vest in it for the purposes of that

(3) AIR 1974 SC 2009

undertaking were granted certain powers of eviction in respect of unauthorized occupation of any Corporation premises. According to Section 105-B, the Commissioner by notice served on the person in unauthorized occupation, could ask him to vacate if he had not paid for a period of more than two months the rent or taxes lawfully due from him in respect of such premises, or sub-let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; or committed, or is committing, such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises; or otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such premises; or if any person is in unauthorized occupation of any corporation premises; or any corporation premises in the occupation of any person are required by the corporation in the public interest. Before making such an order, the Commissioner is required to issue a notice calling upon the person concerned to show cause why an order of eviction should not be made and specify the grounds on which the order of eviction is proposed to be made. The person concerned could file a written statement and produce documents and was entitled to appear before the Commissioner by advocate, attorney or pleader. The Commissioner, therefore, had the power to evict those in unauthorized occupation in relation to premises belonging to or vesting in, or taken on lease by the corporation. The Commissioner for the purpose of holding an enquiry had the same powers as are vested in a civil Court under the Code of Civil Procedure, when trying a suit, in respect of summoning and enforcing the presence of any person and examining him on oath; besides, requiring the discovery and production of documents as also any other matter which may be prescribed by regulations. The provisions of the Bombay Government Premises (Eviction Act) were also more or less similar except that they related to Government premises and the power to order of eviction is given to competent authority not lower in rank than that of a Deputy Collector or an Executive Engineer appointed by the State Government. The only other matter in respect of which the provisions of the Government Premises (Eviction) Act differed from the provisions of the Bombay Municipal Corporation Act was that Section 8-A of the former Act provided that no Civil Court shall have jurisdiction to entertain any suit

or proceedings in respect of the eviction of any person from any government premises on any of the grounds specified in Section 4 for the recovery of the arrears of rent or damages payable for use and occupation of such premises. It was submitted that there were two procedures available to the Corporation and the State Government, one by way of a suit under the ordinary law and the other under either of the two Acts, which is harsher and more onerous than the procedure under the ordinary law, therefore, the latter was hit by Article 14 of the Constitution in the absence of any guidelines as to which procedure may be adopted. After detailed discussion, it was held that where a statue providing for a more drastic procedure different from the ordinary procedure covers the whole fields covered by the ordinary procedure without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, a provision for appeal may cure the defect. Further, if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred, the statute will not be hit by Article 14. Besides, where the statute itself covers only a class of cases, the statute will not be bad. The fact that in such cases the Executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the contention that mere availability of two procedures will vitiate one of them, that is, the special procedure, it was held, was not supported by reason of authority. It was further held that the statute itself in the two classes of cases clearly laid down the purpose behind them, that is, that the premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. It was, therefore, held that merely because one procedure provides the forum of a civil court while the other provides the forum of an administrative tribunal, it cannot be said that the latter is necessarily more drastic and onerous. To attract the inhibition of Article 14, it was held there must be substantial and qualitative differences between the two procedures so that one is really and substantially more drastic and prejudicial. Superfine differences are bound to exist when two procedures are prescribed.

(40) Therefore, it follows that merely because the prosecution for a violation of the provisions of D&C Act and the 1945 Rules framed thereunder entails some kind of penalty would not be a bar to trial of cases in respect of which there has been a contravention of Section 21 of the NDPS Act a reference to which has been made above. A detailed procedure has been provided for trial of cases under the NDPS Act. Section 36A of the NDPS Act relates to offences triable by the Special Court. Section 36B relates to appeal and revision. Section 36C relates to application of the Code of Criminal Procedure to proceedings before a Special Court and Section 36D relates to transitional provision. In terms of Section 36C, the provisions of the Code of Criminal Procedure (including the provisions as to bail and bail bonds), are to apply to proceedings before a Special Court and for the purposes of the said provision, the Special Court is deemed to be a Court of Session and the person conducting a prosecution before a Special Court is deemed to be a Public Prosecutor. Section 4 of the Criminal Procedure Code relates to trial of offences under the Indian Penal Code and other laws. Sub Section (2) thereof envisages that all offences under any other law that is law other than the Indian Penal Code which would include cases under the NDPS Act, shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, that is, the provisions contained after Section 4 but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. For the trial of offences under the NDPS Act proper procedure and guidelines have been provided. Therefore, the procedure provided for trial and prosecution of offences under the NDPS Act would not in any manner be hit by Article 14 of the Constitution; besides, even if it covers only a class of cases which are mentioned in the NDPS it would not be bad and the fact that in such cases the prosecution chooses as to which cases are to be tried under the special procedure would not affect the validity of the NDPS Act and the mere availability of two procedure does not vitiate one of them that is the special procedure under the NDPS Act. Besides, it is for the State to decide as to in which of the two enactments that is, the NDPS Act or the D&C Act is the prosecution to be launched. It may also appropriately be noticed that the provisions of Section 80 of the NDPS Act envisage that

application of the D&C Act is not barred. Section 80 NDPS Act reads as under:-

> ***"Application of the Drugs and Cosmetics Act, 1940 not barred.—*** *The provisions of this Act or the rules made thereunder shall be in additional to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder."*

(41) This Court in the case of ***Vinod Kumar v. State of Punjab(4)*** considered the question as to whether a wholesale drug dealer, a retailer and their employees possessing proper and valid licence for dealing in drugs specified in Schedule C and Schedule CI as well as drugs not specified in those Schedules of the D&C Act and the 1945 Rules can be held liable for an offence punishable under the NDPS Act. After making a reference to Section 80 NDPS Act, it was held that a person can very well be prosecuted both under the NDPS Act as well as under the D&C Act simultaneously for violation of the provisions of the said Acts. It was held that merely because a person is prosecuted for violation of D&C Act that would not operate as a bar to prosecute him under the provisions of the NDPS Act. Rather if the offences made out under the D&C Act also comes within the scope of the provisions of the NDPS Act such person shall be prosecuted for possession of the contrabands violating the provisions of the NDPS Act. Both the Acts, it was held are independent and violation of one Act does not mean no violation of the other. Therefore, merely, because prosecution is launched and trial is conducted under the NDPS Act, which is considered a harsher and an onerous provision, the initiation of the proceedings cannot be said to be improper or bad. In case it is done for any extraneous reasons or circumstances or with a mala fide intention, the same would of course be subject to judicial scrutiny and review. In the circumstances, when there has been a contravention of a certain manufactured drug or a psychotropic substance and which falls within the purview of NDPS Act and the NDPS Rules, the possession, sale and transportation of which is prohibited, or is being done without proper licence or with no proper authorization, the prosecution under the provisions of the NDPS Act would not be prohibited and it cannot be said to be in any manner illegal.

---

(4) 2013(1) RCR (Crl.) 428

(42) The contention of the learned counsel for the petitioners is that the police authorities being unmindful of the actual provisions of the NDPS Act and the NDPS Rules have harassed even the bona fide chemists in the State holding a valid and legal licence in accordance with the provisions of the D&.C Act and the 1945 Rules. In this regard it needs to be mentioned that the instance of unnecessary harassment are indeed unfortunate and these need to be seriously viewed by the Courts. The provisions of the NDPS Act including providing for prosecution in respect of manufactured drugs are stringent and harsh. These have been enacted to curb menace of drug trafficking. In ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimrai Bijja(5)***, the Hon'ble Supreme Court considered a case with regard to stringent provisions of the Terrorists and Disruptive Activities (Prevention) Act, 1987. It was observed that the said Act is a penal statute. Its provisions are drafted in that they provide minimum punishments and in certain cases enhanced punishments also. The provisions of the said Act were a departure from the ordinary law since the ordinary law was found to be inadequate and not sufficiently effective to deal with the special class of offences relating to terrorists and disruptive activities. The legislature, therefore, made special provisions which can in certain respects be said to be harsh, created a special forum for the speedy disposal of such cases, provided for raising a presumption of guilt, placed extra restrictions in regard to release of the offender on bail, and made suitable changes in the procedure with a view to achieving its objects. It was held that it is well settled that statutes which impose a term of imprisonment for what is a criminal offence under the law must be strictly construed. It was further held that while invoking a criminal statute such as the aforesaid Terrorists and Disruptive Activities (Prevention) Act, the prosecution is duty bound to show from the record of the case and the documents collected in the course of investigation that facts emerging therefrom prima facie constitute an offence within the letter of the law. When a statute provides special or enhanced punishment as compared to the punishment prescribed for similar offences under the ordinary penal laws of the country, a higher responsibility and duties are cast on the Judge to make sure there exists

(5) AIR 1990 SC 1962

prima facie evidence for supporting the charge levelled by the prosecution. Therefore, when a law visits a person with serious penal consequences extra care is to be taken that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law. The said observations in the case of ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja*** *(supra)* were affirmed by a Five Judges Bench of the Hon'ble Supreme Court in ***Sanjay Dutt v. The State through CBI Bombay(6)***. Therefore, when a law visits a person with serious penal consequences extra care is indeed to be taken that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law. However, on that account to say that the offenders who have contravened and indulged in clandestine sale of narcotic drugs and manufactured drugs that have been notified by the Central Government in the official gazette, besides, psychotropic substances are to be penalized only under the D&C Act and the 1945 Rules would not be the correct position in law. It is for the State to prosecute the offenders wherever the provisions of the NDPS Act and the NDPS Rules have been violated in accordance with the said provisions rather than to say that such offenders can only be penalized under the D&.C Act and the 1945 Rules. In other words, wherever there is a violation of the provisions of the NDPS Act and the NDPS Rules, then the offence comes within the ambit of the said Act and the Rules. The prosecution against the offenders can, therefore, be validly launched under the NDPS Act.

(43) The Delhi High Court in ***Rajinder Gupta v. State(7)*** referred to Rule 97 (1) of the D&C Rules and observed as follows:-

> *"Rule 65 (1), inter alia, provides that the manufacture of any psychotropic substance other than those specified in schedule I shall be in accordance with the conditions of license granted under the D and C Rules and D and C Act. In other words, in so far as the psychotropic substances not mentioned in Schedule I*

(6) JT 1994 (5) SC 540

(7) 2006 Crl.LJ 647

to the NDPS Rules but mentioned in the Schedule to the NDPS Act are concerned, their manufacture shall be governed by the D and C Act and Rules and not by the NDPS Act or NDPS Rules. Rule 66 relates to possession etc. of psychotropic substances. Sub-Rule (1) thereof provides that no person shall possess "any psychotropic substance" for any of the purposes covered by the D and C Rules, unless he is lawfully authorized to possess such substance for any of the said purposes under the NDPS Rules. The expression "any psychotropic substance" obviously has reference to those listed in Schedule I to the NDPS Rules. Rule 64 is the governing rule in Chapter VII of the NDPS Rules. When a psychotropic substance does not find mention in Schedule I to the NDPS Rules, the prohibition qua possession contained in Rule 64 does not apply; That being the case, in respect of such a psychotropic substance, Rule 66 would also not apply as it has reference to only those psychotropic substance which are included in Schedule I to the NDPS Rules. Rule 67 of the NDPS Rules relates to transport of psychotropic substances. It is expressly subject to the provisions of Rule 64 and clearly has reference to the transport, import inter-state or export inter-state of those psychotropic substances which are included in Schedule I to the NDPS Rules. The rule would have no applicability in respect of those psychotropic substances which are not to be found in Schedule I to the NDPS Rules. Clearly, then, inasmuch as Buprenorphine Hydrochloride is not included in Schedule I to the NDPS Rules, its manufacture, possession, sale, transport would neither be prohibited nor regulated by the NDPS Rules and consequently by the NDPS Act. It being Schedule H drug would fall within the rigorous of the D&C Act and Rules."

(44) The above observations show that the psychotropic substances which are mentioned in Schedule I of the NDPS Rules do entail prosecution under the NDPS Act. To this it may be added that those drugs which are notified as 'manufactured drug' by the Central Government particularly in terms of notification dated 14.11.1985 and subsequent notification dated 29.1.1993 would entail prosecution under Section 21 of the NDPS Act. Therefore, in each case it would be required

to be seen whether the drug in respect of which there is alleged to be a contravention by an offender is indeed in violation of the NDPS Act and this is to be determined and examined with reference to the notified manufactured drugs as mentioned in the notification dated 14.11.1985 and 29.1.1993. The contravention of psychotropic substances mentioned in the Schedule to the NDPS Act and the Schedule 'I' to the NDPS Rules in violation of the same may also entail prosecution under the NDPS Act. Besides, it would be also required to be examined whether the percentage of the drug is within the permissible limit as has been provided for. However, the bulk quantity, in respect of which there is a contravention or is recovered from an unauthorized person would be indicative of the fact that it was not being used for medicinal or therapeutic purposes but as a drug to sedate or for intoxication or to give a sharp stimulating effect to get an unhealthy thrill so as to get a 'kick'. It is to be kept in mind that drugs which are classified as narcotic drugs or psychotropic substances not used for medicinal or therapeutic purposes but are rather misused by drug addicts or drug traffickers would warrant prosecution under the NDPS Act.

(45) The common drugs that are mostly misused for purposes other than medicinal and therapeutic use are drugs like Codeine, Dextropropoxyphene and Diphenoxylate. These are mentioned at serial Nos.132, 146 and 156 respectively in Schedule 'H' of the 1945 Rules, and are also mentioned at serial Nos.28, 33 and 44 respectively in the notification specifying small quantity and commercial quantity of drugs by making a reference to clauses (viia) and (xxiiia) of Section 2 of the NDPS Act. Besides, these are also mentioned at serial Nos.35, 87 and 58 respectively of the notification dated 14.11.1985. Other drugs which are commonly misused are 'Alprazolam, Chlordiazepoxide, Delorazepam, Diazepam and Buprenorphine' which are 'psychotropic substance' and are mentioned at serial Nos.30, 36, 42, 43 and 92 of the Schedule to the NDPS Act with reference to clause (xxiii) of Section 2 of the NDPS Act. These are commonly and widely misused by drug traffickers for clandestinely indulging in drug trafficking to give an intoxicating or stimulating effect and not for medicinal or therapeutic use. Drug addicts are known to take huge discharge of these drugs at a time and even drug manufacturers are packing 100 tablets of pouch/bottles packing of some

such drugs though some of them even fall under Schedule 'H' drug of the 1945 Rules and are to be sold in retail on a prescription by a registered medical practitioner only or are to be supplied to registered medical practitioners, hospitals, dispensaries and nursing homes against signed order in writing which are to be preserved by the licencee for a period of two years in terms of Rule 65(9)(a) and (b) of the 1945 Rules which reads as under:-

> *"(9) (a) Substances specified in Schedule H or Schedule X shall not be sold by retail except on and in accordance with the prescription of a Registered Medical Practitioner and in the case of substances specified in Schedule X, the prescriptions shall be in duplicate, one copy of which shall be retained by the licensee for a period of two years.*
>
> *(b) the supply of drugs specified in Schedule H or Schedule X to Registered Medical Practitioners, Hospitals, Dispensaries and Nursing Homes shall be made only against the signed order in writing which shall be preserved by the licensee for a period of two years."*

(46) A perusal of the above Rule 65(9)(a) and (b) mandates that the substances specified in Schedule 'H' or Schedule 'X' are to be sold in accordance with the prescription of a registered medical practitioner and in case of substances in Schedule 'X' the prescription is to be in duplicate and one copy of the same is to be retained by the licensee for two years. Insofar as the supply of drugs specified in the said Schedule 'H' or Schedule 'X' to registered medical practitioners, hospitals, dispensaries and nursing homes are concerned, the same are to be made only against the signed order in writing which are to be preserved by the licensee for two years. Therefore, it is not as if the drugs mentioned in Schedule 'X' can be carried by any licensee in any manner that he likes or can be received by him without adherence to the D&C Act and the 1945 Rules. The drugs which are mostly misused in Schedule 'H' as already noticed are Codenie, Dextropropoxyphene, Diphenoxylate, its salts at serial Nos.132, 146 and 156 of Schedule 'H'. These drugs fall within the ambit of 'manufactured drugs' as have been notified by the Central Government in terms of notification dated 14.11.1985 at serial

Nos. 35, 87 and 58 respectively and contravention of the same is punishable under Section 21 NDPS Act which envisages that whoever, in contravention of any provisions of this Act i.e. the NDPS Act or any Rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable according to the quantity of the manufactured drug of which there has been a contravention and is specified therein.

(47) For the purpose of regulation and carriage of various drugs which fall under the category of narcotic drugs, manufactured drugs and psychotropic substances, the Government of Punjab has framed the Punjab Narcotic Drugs and Psychotropic Substances Rules 2012 (hereinafter referred to "Punjab NDPS Rules 2012") vide notification dated 13.12.2012 in exercise of the powers conferred by Section 78 read with Sections 10 and 71 of the NDPS Act and other powers enabling it in this behalf. Rule 8 provides for transport of opium. Rule 9 provides for prohibition for opening of packets during transport. Chapter II of the Punjab NDPS Rules 2012 relates to possession, transport, purchase, sale, import inter-State, export inter-State use, consumption of manufactured drugs except prepared opium and coca leaf. Rules 17, 18 and 19 of the Punjab NDPS Rules 2012 read as under:-

> **"17.** ***Possession of manufactured drugs.***—*Subject to the provisions of these rules, no person shall be allowed to possess any manufactured drugs unless the person is lawfully authorized to possess the same under these rules.*
>
> **18.** ***Transport, import inter-state or export inter-state of manufactured drugs.***—*Save as otherwise provided in these rules, a person referred to in rule 17 may transport, import inter-state and export inter-state manufactured drugs other than prepared opium and coca leaf in such quantity and in such manner, as may be specified in the permit issued by the Drugs Controller or the Director Ayurveda, Punjab, (for Ayurvedic, Unani & Sidha drugs), as the case may be, or any other officer*

authorized by the Government in this behalf in accordance with the provisions of these rules.

19. ***Prohibition of transport, import inter-state or export inter-state by post.****—Save as otherwise provided nothing in these rules shall be deemed to permit the transport, import inter-state or export inter-state of manufactured drugs by means of post."*

(48) In terms of Rule 17, no person is to possess any manufactured drugs unless lawfully authorized under the Rules. Rule 18 relates to transport, import inter-state or export inter-state of manufactured drugs. In terms thereof, a person referred to in Rule 17 i.e. a lawfully authorized person to possess manufactured drugs may transport, import inter-State and export inter-State manufactured drugs other than prepared opium and coca leaf in such quantity and in such manner, as may be specified in the permit issued by the Drugs Controller or the Director Ayurveda Punjab (for Unani and Sidha drugs) as the case may be, or any other officer authorized by the Government in this behalf in accordance with the provisions of these Rules. Therefore, the cases in which where persons are transporting manufactured drugs specially in a bulk form which is for use other than of medicinal or therapeutic purposes and thereafter, taking a plea that they are valid licence holders under the 1945 Rules, it would require to be ascertained as to whether they have a transport permit issued under Rule 18 of the Punjab NDPS Rules 2012. In terms of Rule 19, transportation, import inter-State or export inter-State of manufactured drugs by means of post is prohibited. Rule 23 relates to grant of passes for transport and export inter-State. The same reads as under:-

"23. ***Grant of passes for transport and export inter-state.****—An inspector may grant, to a Licensed Manufacturer or Licensed Dealer, a pass in Form No. ND-3 and Form No. ND-4 for transport and export inter-State of manufactured drugs, other than the prepared opium and coca leafs not exceeding the quantity to which he is entitled to possess:*

Provided that such transport and export pass shall not be granted except on the production of a permit signed by the competent authority of the State or district of destination."

(49) The above Rule 23 confers powers on an Inspector to grant passes for transport and export inter-State to a Licensed Manufacturer or a Licensed Dealer, a pass in Form No. ND-3 and Form No. ND-4 for transport and export inter-State of manufactured drugs, other than the prepared opium and coca leafs not exceeding the quantity to which he is entitled to possess. The export pass is not to be granted except on the production of a permit signed by the competent authority of the State or District of destination. 'Pass' in Rule 2(xii) of the Punjab NDPS Rules 2012 has been defined to mean a pass granted under the Rules; besides, 'permit' in terms of Rule 2(xiii) has been defined to mean a permit granted under the Rules. Rule 24 of the Punjab NDPS Rules 2012 relates to possession of drugs by medical practitioner and medical institutions. The same reads as under:-

> **"24.** ***Possession of drugs by Medical Practitioner and Medical Institutions.****—(1) A Medical Practitioner, duly registered under the provision of sub-rule (4) of this rule, may possess the following quantities of manufactured drugs other than prepared opium and coca leafs for use in his practice and not for sale –*
>
> *(i) Morphine (in all forms) 5 gram*
>
> *(ii) Pethidine Injection 5 gram*
>
> *(iii) Fentanyl (in all forms) 1 gram*
>
> *(iv) Fu-Fentanyl (in all forms) 1 gram*
>
> *(v) Medicinal Opium in the form of 30 gram*
>
> *Ayurveda and Unani medicines containing more than 0.2 per cent morphine in the preparations,*
>
> *(vi) any other manufactured drug 100 doses:*
>
> *Provided that a Medical Practitioner of the indigenous systems of medicines, may possess only those manufactured drugs, which are included in the indigenous system of medicine:*
>
> *Provided further that the Drug Controller or the Director, Ayurveda Punjab, as the case may be, with the prior approval of*

the Government, authorize any Medical Practitioner to possess the aforesaid manufactured drugs in any larger quantity.

Explanation.—*The term 'use in his practice' covers only the actual direct administration of the drugs in injections, surgical operations or other emergent cases by or in the presence of Medical Practitioner.*

(2) A Medical Institution duly registered under the provisions of Sub Rule (4), may possess such quantity of manufactured drugs other than the prepared opium and coca leaf, as may be permitted from time to time by the Drugs Controller or the Director, Ayurveda, Punjab, as the case may be, keeping in view the number of Medical Practitioners working and number of patients under treatment.

(3)(i) A Medical Practitioner, who is permitted to possess manufactured drugs under sub-Rule (1) or a Medical Institution, which is permitted to possess such drugs under sub-rule (2), shall obtain his supplies from a Licensed Chemist or Licensed Dealer or Licensed Manufacturer only and shall maintain a register showing receipts as well as disposal of each drug. The register shall be in Form No. ND-5;

(ii) A separate register or a separate part of the register shall be assigned to each of the drugs and preparations.

(iii) Entries in the register must be made on the day on which manufactured drugs are received or dispensed with. It is not necessary that the Medical Practitioner should himself enter in the register, the particulars of manufactured drugs administered by him or under his supervision, but entries must be verified by him on the date of entry or on the following date. Where a Medical Practitioner practices at more than one premises, a separate account of manufactured drugs kept at each premises shall be maintained.

(iv) Every entry required to be made and every correction of such entry must be made in ink and no cancellation, obliteration or

alteration shall be made of any entry in the register and any correction of any entry must be made by way of marginal note or footnote, which must specify the date on which the correction is made.

(v) The stock of manufactured drugs in the possession of a Medical Practitioner or a Medical Institution and the accounts relating thereto shall be open for inspection by the inspector. The Medical Practitioner or a Medical Institution shall, if required to do so by the Drug Controller or the Director, Ayurveda Punjab, as the case may be, submit such information relating to the transactions of manufactured drugs, as may be demanded.

(vi) If a messenger is sent by the Medical Practitioner or by the Medical Institution to take delivery of the manufactured drugs, the messenger must be given an authority, in writing, signed and specifying the messenger by name with his/or her signatures and photograph both attested, to receive the drugs. A Licensed Chemist, Licensed Dealer or a Licensed Manufacturer is forbidden to deliver drugs to messenger, if he is not so authorized.

(vii) The Medical Practitioner or a Medical Institution shall keep the drugs under lock and key.

(viii) While carrying drugs to the house of a patient, the Medical Practitioner shall take full precautions for the safe custody of manufactured drugs. Thefts and losses of manufactured drugs should be forthwith reported to the nearest Police Station.

(ix) All records including registers and day book must be kept for not less than two years from the date of the last entry therein.

(4) A Medical Practitioner or a Medical Institution wishing to possess or dispense the manufactured drugs for use in practice, shall get registered on an application made to the Drugs Controller or the Director, Ayurveda Punjab, as the case may be, alongwith such fee as may be notified by the Government from time to time. The full particulars of such registration shall be

maintained in a register in Form No. ND-6. The Drugs Controller or the Director Ayurveda, Punjab, shall, immediately after the registration of the Medical Practitioner or a Medical Institution, issue a 'Registration Certificate' in Form No. ND-7 which shall be produced on demand by the inspector for inspection."

(50) The above Rules give details, requirements for possession of drugs by Medical Practitioner and Medical Institutions. Rule 26 relates to possession for personal use. The same reads as under:-

"26. *Possession for personal use.*—*A person, on the prescription of a Medical Practitioner, may possess such quantity of manufactured drugs, which may be sold to him by a Licensed Chemist for medicinal purposes, as have been at one time supplied for use in accordance with the provisions of these rules."*

(51) In terms of the above Rule 26, it is on the prescription of a Medical Practitioner that a person may possess such quantity of manufactured drugs which may be sold by a licensed chemist for medicinal purposes, as have been at one time supplied for use in accordance with the provisions of the Punjab NDPS Rules 2012. The said Punjab NDPS Rules, 2012 further provide for grant of licence to a chemist and a dealer in terms of Rule 27, sale of manufactured drugs by a licensed chemist in terms of Rule 28, sale of manufactured drugs by a licensed dealer in terms of Rule 29, grant of licence to a manufacturer in terms of Rule 30. These Punjab NDPS Rules, 2012 are comprehensive and regulate the manner in which a manufactured drug is to be sold, transported and administered. The alarming aspect is the misuse of manufactured drugs by drug addicts and drug traffickers which evidently is not for medicinal or therapeutic purposes. Therefore, to curb this menace it is obligatory to enforce the stringent provisions of the NDPS Act for violation of the NDPS Act and NDPS Rules.

(52) The contention of the learned Advocates appearing for the accused is that even where the persons are validly carrying the drugs, they are harassed by the police. Besides, even where the drug may not be a 'manufactured drug', narcotic drug or psychotropic substance, the

person in possession of the drug is harassed. In order to prevent this misuse, it would be for the State Government to take necessary steps. The instructions issued by the Narcotic Control Bureau ('NCB' - for short) though are for the purposes of investigation by the NCB but can be used as guidelines. The Supreme Court in ***Khet Singh v. Union of India(8)*** observed as follows:-

> *"The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search*

(8) 2002(2) RCR (Crl.) 277

and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody."

(53) The above observations show that the instructions issued by the NCB are in the nature of guidelines. Even otherwise, a violation of procedural provisions which are generally meant for affording a reasonable and adequate opportunity to an offender are conceived in his interest and violation of procedural provision does not automatically vitiate the investigation unless it is shown to have occasioned a failure of justice or resulted in prejudice. Besides, the Hon'ble Supreme Court in ***Thana Singh v. Central Bureau of Narcotics(9)*** has issued directions for speedy trial of cases under the NDPS Act. Each State in consultation with the High Court has been directed to establish special Courts which would deal exclusively with the offences under the NDPS Act. The said direction inter alia provide for establishment of special Courts to deal exclusively with offences under the NDPS Act; no Court under the NDPS Act is to grant adjournments at the request of a party except where the circumstances are beyond the control of the party; where examination of a witness is not concluded on the same day he be examined on consecutive days but not on different dates spread out over months; to conduct examination and cross examination of a witness on consecutive dates over a block period of three to four days; to save time evidence of official witnesses be taken in the form of affidavits by making most use of Section 293 of the Code of Criminal Procedure; every State to have access to Narcotic Laboratories so that samples collected for the purpose of the NDPS Act on a timely basis to them for scrutiny; after completion of tests of samples by the Laboratories the result of the same must be furnished to all parties concerned with the matter and any request for retesting/re-sampling shall not be entertained under the NDPS Act as a matter of course although these may, however, be permitted in extremely exceptional circumstances for cogent reasons to be recorded by the presiding officer; nodal officers be appointed by all the departments dealing with NDPS cases for monitoring the progress of investigation and trial; there must be a one 'Pairvi' officer or other such officer for each

(9) 2013(1) RCR (Crl.) 861

Court who shall report the days proceedings to the nodal officer assigned for that Court; District and Sessions Judge shall make a recommendation for appointment of public prosecutor who play the most important role in the administration of justice in consultation with the Administrative Judge/Portfolio Judge/Inspecting Judge in charge of looking after the administration of concerned Sessions Division and filing of charge-sheet and supply of other documents must also be provided in electronic form, however, this direction must not be treated as substitute of hard copies of the same which are indispensable for Court proceedings. The contention of the learned counsel for the petitioners which needs serious attention is that the reports from the FSL are delayed which entails unnecessary incarceration of an alleged offender even though the drugs with which he is alleged to have committed a contravention may be within the permissible limits. In Thana Singh's case (supra), the Hon'ble Supreme Court has laid down guidelines . It has noticed the number of Central Forensic Science Laboratories (CFSL) which are in operation and which are being established. The CFSL at Chandigarh is in operation. It has also noticed the number of State and Regional Forensic Science Laboratories in the State of Haryana, there is one main State FSL and two regional FSL in the State of Punjab there is one main State FSL. It has been observed that a qualitative and quantitative overall of these laboratories is necessary for ameliorating the present state of affairs for which the following directions have been issued:-

(1) The Centre must ensure equal access to CFSLs from different parts of the country. The current four CFSLs 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 CFSLs must be established, especially to cater to the needs of southern and eastern parts of the country.

(2) Analogous directions are issued to the States. 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.

(3) The above mentioned authorities 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 agencies concerned.

(4) 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.

(54) Indeed the delay in testing the sample does result in prejudice to an alleged offender as till the results are available there can be no definite certainty with regard to the contraband in respect of which there has been a contravention or that has been recovered. In such cases to await the outcome of the final FSL report where there is likely to be delayed, the accused may be released on interim bail. In ***Sukhwant Singh v. State of Punjab(10),*** it has been held by the Hon'ble Supreme Court as follows:-

> *".... following the decision of this Court in* Kamlendra Pratap Singh v. State of U.P. (2009) 4 SCC 437 *we reiterate that a court hearing a regular bail application has got inherent power to grant interim bail pending final disposal of the bail application. In our opinion, this is the proper view in view of Article 21 of the Constitution of India which protects the life and liberty of every person.*

(10) (2009) 7 SCC 539

When a person applies for regular bail then the court concerned ordinarily lists that application after a few days so that it can look into the case diary which has to be obtained from the police authorities and in the meantime the applicant has to go to jail. Even if the applicant is released on bail thereafter, his reputation may be tarnished irreparably in society. The reputation of a person is his valuable asset, and is a facet of his right under Article 21 of the Constitution vide Deepak Bajaj v. State of Maharashtra (2008) 16 SCC 14. Hence, we are of the opinion that in the power to grant bail there is inherent power in the court concerned to grant interim bail to a person pending final disposal of the bail application. Of course, it is in the discretion of the court concerned to grant interim bail or not but the power is certainly there."

(55) Therefore, the presiding officer of a Special Court dealing with NDPS cases wherever the need is felt and where the matter is being unnecessarily delayed may grant interim bail till the receipt of the FSL report and thereafter considered the case after the receipt of the report.

(56) As a consequence of the above, it may be noticed that:-

(i) Manufactured drugs are those drugs which are defined in Section 2 (xi) of the NDPS Act and have been notified by the Central Government vide notification dated 14.11.1985 and subsequent notification dated 29.1.1993. The possession of such drugs in contravention of the NDPS Act and the NDPS Rules would entail criminal prosecution of the offender under Section 21 of the NDPS Act.

(ii) The mere fact that the drugs which are covered under 'manufactured drugs' under the NDPS Act and the NDPS Rules and psychotropic substances as mentioned in Schedule of the NDPS Act and Schedule I of the NDPS Rules and are also covered by the D&C Act and the 1945 Rules thereunder would not mean that the offender can be penalised only under the D&C Act and the 1945 Rules

and not proceeded against the NDPS Act and the NDPS Rules. In case there is a contravention of the NDPS Act and the NDPS Rules, the stringent provisions of the latter can be resorted to.

(iii) A person possessing manufactured drugs in terms of the NDPS Act and the NDPS Rules is to strictly adhere to the provisions relating to sale, purchase, transport, carrying, storage, distribution etc. in accordance with the provisions of the D&C Act and the 1945 Rules as also the provisions of the Punjab NDPS Rules 2012.

(iv) For transportation of the 'manufactured drugs' a pass or permit in terms of Rule 18 of the Punjab NDPS Rules 2012 is to be possessed.

(v) It is to be ascertained in each case whether the manufactured drug, the contravention of which is alleged by a person falls within the permissible limits of the percentage of dosage provided for the drug by the notification dated 14.11.1985 and subsequent notification dated 29.01.1993 issued in exercise of power conferred by Section 2(xi)(b) NDPS Act. However, the contravention of manufactured drug or possession of quantity in bulk is to be taken into consideration and not per dosage specially when there is a violation of the D&C Act and the 1945 Rules that is to say they are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization. The possession of quantity in bulk would be an indication that it is not for medicinal or therapeutic use but is sought to be misused by drug addicts and drug traffickers and would be treated as applicable to the entire quantity recovered of anyone or more narcotic drug or psychotropic substance of that particular drug in dosage forms and not just its pure drug content.

(vi) When a manufactured drugs are sold, purchased, distributed, stored, transported, carried etc. in bulk form, the notification dated 18.11.2009 issued by the Central Government in exercise of powers under Section 2 (viia) and (xxiiia) NDPS Act would apply and the question that these drugs contain an exception in terms of notification dated 14.11.1985 would not apply as the exceptions would apply when the manufactured drugs are for medicinal or therapeutic use.

(vii) The quantity of manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words the mere dosage of the manufactured drug in one capsule is not to be considered but the dosage in the number of capsule together is to be considered for determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substance and preparations as mentioned therein to be manufactured drugs.

(viii) It is suggested that the State authorities should get the drugs in respect of which there is a contravention and that are recovered examined by the Chemical Analysts at the earliest and a report provided to the offender at the earliest so that the position can be ascertained as to whether the alleged offender was in possession of permissible quantity of the drug or otherwise. In case there is delay this would entitle the offender to at least interim bail till the report is finally received.

(ix) In relation to the search and seizure, the provisions of the Code of Criminal Procedure are to be followed. The instruction issued by the NCB should be circulated so these are followed as guidelines. The violation of the guidelines would not per se entail illegality or an irregularity unless it is shown the same has occasioned a failure of justice or resulted in prejudice.

(x) The guidelines laid down and directions issued by the Hon'ble Supreme Court in the case of ***Thana Singh v. Central Bureau of Narcotics*** *(supra)* should be meticulously and strictly followed and steps should be taken to ensure their due compliance.

(xi) For the sale, purchase, storage, carriage, transportation and use etc. of manufactured drugs, the provisions of the NDPS Act, the D&C Act, the 1945 Rules and the Punjab NDPS Rules, 2012 should be strictly adhered to and followed and violation of the same would necessarily entail its consequences including penal consequences.

(57) With the above observations, the reference is answered. It is held that manufactured drugs are part of narcotic drugs and a person found contravening and in possession of bulk quantity, which is such that it is used for other than therapeutic or medicinal purposes but for intoxication or to get a stimulant effect or is in possession of psychotropic substance in respect of the drugs which find a mention under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetic Rules, 1945 can be tried and prosecuted under the NDPS Act. The questions have been considered on the bail application. Therefore, nothing stated herein shall be taken as an expression of opinion on the merit of the case and the learned trial Court in each of the cases shall consider the case on the basis of evidence and material as adduced before it. The cases shall be sent back to the learned Single Judge for disposal.

M.Jain