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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1832 OF 2025

Ronald Barisigara ... Applicant

V/s.

The Union of India & Anr. ... Respondents

Mr. Khushal Parmar with Mr. Sumant More for the applicant.

Mr. Rushikesh Munde, Spl.P.P. with Shatabdi Netke, Sohel Shaikh, Pranit Kole for Respondent No.1.

Ms. Anabha Deshmukh, APP for Respondent No.2-State.

WITH

CRIMINAL BAIL APPLICATION NO.3390 OF 2025

Abdulai Francis Bundu ... Applicant

V/s.

Union of India & Anr. ... Respondents

Mr. Dilip Mishra with Ms. Mallika Sharma i/b Mr. Ayaz Khan for the applicant.

Mr. H. J. Dedhia, APP for the Respondent – State.

Ms. Ruju Thakker with Priyanshu Doshi for Respondent-DRI.

WITH

CRIMINAL BAIL APPLICATION NO.4341 OF 2025

Raymond Anane Kyeremateng ... Applicant

V/s.

Union of India & Anr. ... Respondents

Mr. Ashwinii Acharii a/w Adv. Taraq Sayed, Adv. Anish Pereira & Adv. A. Kotwal, for the applicant.

Mr. Rushikesh Munde, S.P.P. with Ms. M. Shatabdi, Mr.Sohel Shaikh, Mr. P.Kole for Respondent No.1.
Mr. Vinod Chate, APP for the Respondent -State.

WITH

CRIMINAL BAIL APPLICATION NO.5169 OF 2024

Brandon Sulpisious Migadde ... Applicant
V/s.
Union of India & Anr. ...Respondents

Mr. Khushal Parmar for the Applicant.
Mr. J. B. Mishra with Ms. Sangeeta Yadav, Ashutosh Mishra for Respondent No.1/Union of India.
Ms. Anagha Deshmukh, APP for the Respondent-State.

WITH

CRIMINAL BAIL APPLICATION NO. 436 OF 2025

Avalibe Norbert Michel Semevo ... Applicant
V/s.
Union of India & Anr. ...Respondents

Mr. Munira Palanpurwala a/w Ms. Deepa Amati a/w Ms. Sumaiya Khan for the applicant.
Mr. V.A. Kulkarni , APP for the Respondent – State.
Ms. Sangeeta Yadav for Respondent-DRI.

WITH

CRIMINAL BAIL APPLICATION NO. 1221 OF 2025

Ms. Halima Naiga ... Applicant
V/s.
The Union of India and anr. ...Respondents

Mr. Khushal Parmar a/w. Mr. Sumant More for the applicant.
Mr. Rushikesh Munde, Special PP for Respondent No.1 – UoI.
Ms. Kranti Hiwrale, APP for the Respondent No.2 – State.

CORAM: SHYAM C. CHANDAK, J.
DATED : 21st SEPTMEBER,, 2026

JUDGMENT

. Heard learned Counsel for the parties. Perused the record including the written submissions, where filed.

2. As the learned Special Judge declined to grant bail, the applicants have preferred these Applications for bail. More or less, the Applications have arisen out of similar facts, giving rise to common questions of facts and law. Therefore, all the Applications are being decided by this Common Judgment and Order.

2.1 The Applications are opposed filing the Affidavit-in-Reply.

2.2 Details of the cases in which bail is sought are as under :-

BA No.	Court	NDPS Spl Case No.	Cr./File No. AIU	Sections under NDPS Act
1832/2025	Special Judge, Sessions Court, Gr. Bombay	1218/2022	F.No.SD/INTAIU/99/2022-AP 'D' Date : 06.04.2022	8(c) r/w 21 (c), 23(c),27, 27 (A) & 28
3390/2025	Special Judge, Sessions Court, Gr. Bombay	1946/2024	F.No.DRI/MZU/C/INT-29/2024 Date : 28.03.2024	8(c), 35, 37, 54 r/w21(c),23(c),28, 29 & 30
4341/2025	Special Judge, Sessions Court, Gr. Bombay	304/2023	F.No.SD/INT/AIU/292/2022-AP 'D' Date : 28.08.2022	8(c) r/w 21(c), 23(c), 27, 27 (A) & 28,29
5169/2024	Special Judge, Sessions Court, Gr. Bombay	1365/2022	F.No.DRI/MZU/C/INT-39/2022 Date : 13.05.2022	8(c) r/w 21(c), 23 (c),29 & 30
436/2025	Special Judge, Sessions Court, Gr. Bombay	2249/2023	F.No.DRI/MZU/C/INT-71/2023 Date : 21.06.2023	8(c), 35, 54 r/w 21 (c), 23 (c), 27A, 28, 29 & 30
1221/2025	Special Judge, Sessions Court, Gr. Bombay	112/2023	F.No.SD/INTAIU/211/2022-AP 'B' Date : 24.07.2022	8(c) r/w 22(c), 23(c), 27, 27 (A) & 28,29

CRIMINAL BAIL APPLICATION NO.1832 OF 2025

3. On 06.04.2022, applicant Mr.Ronald Barisigara arrived to Mumbai from Entebbe *via* Sharjah by Air Arabia Flight No.G9-405 dated 05.04.2022. On profiling and suspicion of presence of narcotic substances, the Officers of Customs, Air Intelligence Unit (“AIU Officers”) CSMI Airport, intercepted the applicant. Shri Prashant Deshmukh, Air Customs Superintendent (ACS) served him a notice u/S.50 NDPS Act. Said notice reads :

“ Whereas there is reason to believe that Narcotic Drugs/Psychotropic Substance/Controlled Substances and/or documents, articles and things which may furnish evidence of commission of an offence under the NDPS Act, 1985 are in your possession, therefore, your personal search is to be conducted by the undersigned. **If you so require**, such search will be conducted in presence of the nearest Gazetted Officer or Magistrate.”

sign (Eng)
Prashant Deshmukh.
Air Custom Superintendent.

As asserted in the complaint, the applicant acknowledged the receipt of the notice signing on the notice itself and, responded that he was ready to be searched before a Gazetted Officer. It is stated that, thereafter, Shri Deshmukh conducted the personal search of the applicant in the presence of Gazetted officer, but, nothing incriminating in nature was found on his person.

3.1 Further, the AIU officer asked the applicant whether he had concealed any narcotic substances in his body cavity to which the applicant felt uneasy and, didn't give any satisfactory reply. The applicant was found in possession of medicine/tablet “Antinal

(Nifuroxazide)”, which is used for stopping diarrhea. Therefore and, on the basis of reasonable doubt that the applicant might have concealed some contraband item in his body, at 13.30 hours, he was produced before the 8th Court of the learned Additional Chief Metropolitan Magistrate, Esplande and, permission of the Court was obtained u/S.103 of the Customs Act, 1962 (“Customs Act”), for medical examination including the X-ray and detention of the applicant. Further, the applicant was hospitalized at Sir J.J. Hospital, Mumbai where he was medically examined and treated.

3.2 During his hospitalization, total 95 oval-shaped capsules were naturally ejected by the applicant through rectum (40 capsules on 07th and 55 capsules on 08th April, 2022) under the supervision of Medical Officers/s (experts). On 09.04.2022, Shri Deshmukh visited the hospital and, in the presence of two panchas, doctor, hospital staff members and the applicant, he seized the capsules and recorded the panchanama. The seized capsules were brought to the Office of AIU. On 10.04.2022, the capsules were cut opened in the Office of the AIU in presence of Shri Deshmukh, other Officers of AIU, panchas and the applicant. The powdery substances therein was homogenous. Therefore, the powder from one capsule was tested with the drug field testing kit (DFTK). The test revealed that the substance in the capsules was Heroin. The Heroin was 1235 grams. Said narcotic was then packed, sealed and, a detailed panchanama was drawn.

3.3 The applicant’s statement u/S. 67 NDPS Act recorded on 10.04.2022 revealed that, he had ingested the capsules in Kampala, Uganda on instructions from one Mr. Jey, who recruited him through a friend, Natuela, on a promise of 2 million Ugandan Shillings per trip; that Mr. Jey had earlier made him practise

ingestion with increasing numbers of dummy capsules; that his travel, ticket and hotel were booked and paid for by Mr. Jey; that he was to proceed to Delhi to deliver the consignment to a contact who would meet him on arrival; having earlier met one Stanley at Vasant Kunj on a prior trip; and that, he was unaware of the specific health hazards of ingestion; though he knew such smuggling was a punishable offence in India. He also admitted to having carried drugs on previous visits as well. Hence, the applicant was arrested on the same day.

3.4 Pursuant to an application moved by Shri Deshmukh, ACS, u/S.52A NDPS Act, inventory action was conducted before the Id. Metropolitan Magistrate, 64th Court, Esplanade, who issued its certificate dated 14.06.2022 confirming completion of the procedure. The seized contraband, after drawl of samples S-1 and S-2 (5 grams each), was deposited in the DS-I warehouse, CSMI Airport on 14.06.2022. Sample S-1 was sent for chemical analysis to the CECL, Vadodara and, the Report received on 08.09.2022 confirmed the presence of Heroin. The remnant sample was re-deposited in the DS-I warehouse on 22.09.2022. Investigation resulted in filing of the complaint before the trial Court.

BAIL APPLICATION NO.3390 OF 2025

4. On 27.03.2024, specific intelligence was received that the applicant-Abdulai Francis Bundu, a Sierra Leone national holding Passport No. SLR045846, travelling from Addis Ababa to Mumbai by Ethiopian Airlines Flight ET610, had concealed narcotics and would land at CSMI Airport, Mumbai on 28.03.2024, at about 0630 hrs. Accordingly, the intelligence note was recorded and forwarded to the superior who authorised to take the immediate steps required under NDPS Act. Hence, a DRI team of Shri/s

Manish and Vikas Maharshi, both Intel. Officer, intercepted the applicant at CSMI Airport, at about 0710 hrs on 28.03.2024. Meanwhile, the DRI team had called two panchas.

4.1 Further, on the request of the DRI team, the applicant accompanied them to the office of the Air Intelligence Unit (AIU) as the team intended to carry out his personal search and search of his baggage under NDPS Act. The applicant was then informed that he has the right to be searched in presence of a Magistrate or a Gazetted Officer. In response, he consented for carrying out his personal search in the presence of Gazetted Officer. Therefore, the officer called Mr. V. Sunil Kumar, Superintendent of Customs and informed the applicant that said Mr.V.Sunil Kumar was a Gazetted Officer. The applicant acknowledged this fact. Shri Vikas Maharshi, Intel. Off. also served upon the applicant a notice u/S. 50 NDPS Act to that effect which was signed by panchas as a token of the service in their presence. The notice reads :-

“ Whereas there is reason to believe that some Narcotic substance, covered under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 are in your possession, and therefore, your personal search is to be conducted. You are hereby informed that under the provisions of section 50 of the NDPS Act,1985, you have a **right** to be searched in presence of a Magistrate or a Gazetted officer.”

sign (Eng)
Vikas Maharshi, Intel. Off.

The response of the applicant thereby giving his consent for the personal search reads :-

I have been informed and have understood the notice of personal search under Section 50 of the NDPS Act. I

hereby give my consent for carrying out my personal search in the presence of a Gazetted Officer.

It has been further informed that Mr. V. Sunil Kumar, Superintendent of Customs, is a Gazetted Officer.

The notice, so endorsed, was signed by the accused, the panchas, and the Gazetted Officer.

Panch No.1 (Sign. Eng)
Panch No.2 (Sign. Eng)

sign(Eng)
Abdulai Francis Bundu

4.2 Accordingly, the personal search of the applicant and his baggage was conducted in the presence of the panchas, but, it yielded nothing incriminating. Therefore, Mr. V. Sunil Kumar left the proceedings. Thereafter, the AIU officers asked the applicant whether he was carrying contraband concealed in his body. He replied that he had ingested some narcotic substance in the form of capsule. Accordingly, panchanama was recorded.

4.3 At 13.40 hrs., the applicant was produced before the Id. ACMM, 19th Court, Esplanade by the DRI alongwith an application u/S.103 (3) & (8) Customs Act. The Id. Magistrate granted permission for medical examination, X-ray and detention of the applicant for bringing out the ingested capsules *vide* Order dated 28.03.2024. The applicant was then admitted to J.J. Hospital, Byculla on 28.03.2024, where an NCCT scan confirmed multiple foreign bodies in his bowel/rectum. He was discharged on 30.03.2024 after purging a total of 74 laminated capsules, which were handed over by the hospital to DRI officers in a sealed steel box in presence of independent panchas. The box was opened at the RMO's office, J.J. Hospital on 30.03.2024, in the presence of the panchas, RMO Doctor and the applicant. One of the capsules was cut opened which found containing white coloured powdery

substance. On testing a pinch of that powdery substance with DFTK, the test indicated positive result for Cocaine. Thereafter, remaining 73 capsules were cut opened one by one. Each of the remaining capsules were found containing a similar white powder substance and, on testing the substance found therein individually with DFTK as above, each of the tests showed positive for presence of Cocaine. The 74 capsules were identical in size and shape and the white coloured powder appeared homogeneous. Therefore, the white coloured powder was kept in a plastic packet; thoroughly mixed; weighed 1108 grams net and seized under panchanama along with the capsules' packaging material.

4.4 Statement of the applicant was recorded u/S. 67 NDPS Act on 30/31.03.2024. He revealed that the capsules were handed over to him by one Obodo (a Sierra Leone-based associate) at a hotel in Freetown, Sierra Leone, on 26/27.03.2024. He had ingested them over two sittings before travelling *via* Accra and Addis Ababa to Mumbai, in exchange for USD 2000 promised for successful delivery to an accomplice in India (details of whom were to be shared by Obodo only after his arrival). He disclosed being part of a syndicate along with Obodo and one O.C. Wonder, which had earlier used another carrier (Vincent Benson) to smuggle drugs to Delhi in February 2024 and, voluntarily furnished WhatsApp chat screenshots and surrendered his mobile phones for forensic verification, besides tendering both his Sierra Leonean and a Nigerian passport held in a different name.

4.5 The applicant came to be arrested on 31.03.2024 at 1015 hrs and produced before the Ld. ACMM, Esplanade, who remanded him to judicial custody *vide* Order dated 31.03.2024. Proceedings u/S.52A NDPS Act were conducted on 22.04.2024 before the Id. Metropolitan Magistrate, 64th Court, Esplanade. The seized

contraband (net 1108 grams) was weighed, two samples of 5 grams each were drawn and sealed as 'A-Original' and 'A-Duplicate', and the Inventory Panchanama was drawn. Sample 'A-Original' was sent for chemical analysis and, the test report received on 11.06.2024 confirmed the presence of the Cocaine. Investigation culminated in filing of the complaint before the NDPS Court.

CRIMINAL BAIL APPLICATION NO.4341 OF 2025

5. Shri Deepak Kumar, Air Intelligence Unit, Mumbai on the basis of profiling and suspicion intercepted the applicant-Mr. Raymond Anane Kyeremateng, who had arrived at CSMI Airport, Mumbai from Ghana *via* Doha on 28.08.2022, at 14.00 hrs. by the same dated Doha-Mumbai Indigo Flight. Therefore, Gazetted Officer Shri Sumit Paswan, ACS was called, who served the applicant with notice u/S.50 NDPS Act which reads :

“ Whereas there is reason to believe that Narcotic Drugs/Psychotropic Substance/Controlled substances and/or documents, articles and things which may furnish evidence of commission of an offence under the NDPS Act, 1985 are in your possession, therefore, your personal search is to be conducted by the undersigned. **If you so require**, such search will be conducted in presence of the nearest Gazetted Officer or Magistrate.”

sign (Eng)
(Sumit Paswan)
Air Custom Superintendent.

As a reply to the notice, the applicant stated that :-

I have been informed and have understood the notice of personal search under Section 50 of the NDPS Act. I do require that my personal search may be conducted in the presence of nearest Gazetted Officer.

sign (Eng)
Kyeremateng Raymond Anane

5.1 During the questioning and interrogation, the applicant admitted that he had ingested drugs in his body in the form of capsules and complained of stomach-ache. As the applicant was suspected to be concealing drugs in his body and was complaining of ache in the stomach, he was directly taken to the J. J. Hospital, on 28.08.2022 and, admitted in an emergency ward. The medical examination of the applicant confirmed the presence of foreign substances in his body. On 29.08.2022, an application u/S.103 u/S.103 (3) & (8) Customs Act seeking permission for medical examination of the applicant and bringing out the capsules from his body was filed before the 47th Court of the learned Additional Chief Metropolitan Magistrate, Esplanade which was allowed on the same day.

5.2 During the hospitalization from 29.08.2022 to 30.08.2022, total 87 oval-shaped capsules were ejected by the applicant through rectum, naturally. On 01.09 2022, at 03:00 p.m. Shri Deepak Kumar, ACO called two panchas in Ward No.18, informed them the aforesaid facts and, in their presence and the applicant, Shri Deepak Kumar took the said capsules in his charge. Further, in the hospital itself, one capsule was cut opened in the presence of the panchas, duty doctor and the applicant. It found to contain off-white powder in pellet form. The remaining capsules were then cut opened which also found containing similar substance. The substance in all the capsules was mixed as it was homogenous in nature and, kept in two transparent plastic packets marked "H". Thereafter, little quantity of the mixed powder was tested with DDK. The test revealed that the retrieved powder substance was

Cocaine, cumulatively weighing 1302 grams net. The contraband was seized and sealed under panchanama.

5.3 The applicant was summoned and, his statement u/S. 67 NDPS Act recorded on 01.09.2022 revealed that one Anthony (a Ghana-based travel agent known to him for about a year) had given him the capsules to ingest and smuggle into India, promising him USD 2,000 to fund his wife's medical operation; that he did not know the intended recipient in India, as Anthony was to share the delivery location only after all capsules were expelled; and that he had made three prior visits to India (March, May-June, and July 2022), on two of which he had similarly carried 92 and 84 capsules respectively. He voluntarily furnished WhatsApp chat printouts with Anthony corroborating this pattern, and deposited three mobile phones for forensic analysis. He was arrested on 02.09.2022, at 1100 hrs. u/S.43 NDPS Act and produced before the Id. Metropolitan Magistrate, Esplanade, who remanded him to judicial custody till 16.09.2022.

5.4 On 03.11.2022, an application u/S. 52A NDPS Act was allowed by the Id. Metropolitan Magistrate, 64th Court, Esplanade, pursuant to which inventory action was conducted, two samples of 5 grams each 'S-1' (secret) and 'S-2' (duplicate) were drawn and deposited on 03.11.2022. Sample 'S-1' was sent to the Chemical Examiner, Vadodara, whose report dated 21.02.2023 confirmed the presence (illicit possession) of the Cocaine. Therefore, complaint of the alleged offences was filed.

BAIL APPLICATION NO.5169 OF 2025

6. On 12.05.2022, specific intelligence was received by Shri Abhishek Mishra, Intelligence Officer of the DRI, that applicant-

Brandon Sulpisious Migadde, a Ugandan national, travelling from Entebbe to Mumbai *via* Addis Ababa by Ethiopian Airlines Flight ETO610, has concealed narcotics in his body and would land at CSMI Airport, Mumbai on 13.05.2022, at about 0830 hrs. Acting thereon, a DRI team intercepted the applicant on his arrival at CSMI Airport at about 0930 hrs on 13.05.2022, in the presence of independent panchas. Further, the DRI team took the applicant to the office of DRI. There, the IO, DRI informed the applicant that they intend to carry out his personal search and under the provisions of the NDPS Act he has right of being searched in the presence of a Magistrate or a Gazetted officer; that Shri Manish Kumar, Superintendent of Customs, was a Gazetted Officer. The applicant consented to be searched in the presence of Shri Manish Kumar, the Gazetted Officer. Further, Shri Sanjeev Kumar, Intel. Officer, served Notice to the applicant under Section 50 of the NDPS Act. Said notice reads :

“ Whereas there is reason to believe that some Narcotic substance, covered under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 are in your possession, and therefore, your personal search is to be conducted. You are hereby informed that under the provisions of section 50 of the NDPS Act, 1985, **you have a legal right** to be searched in presence of a Magistrate or a Gazetted officer.

It is hereby further informed that Shri Manish Kumar is a Gazetted Officer”

sign (Eng)
(Sanjeev Kumar)
Intel. Officer

As a reply to the notice, the applicant stated that :-

I have been informed and have understood the notice of personal search under Section 50 of the NDPS Act. I

hereby give my consent for carrying out my personal search in the presence of a Gazetted Officer.

sign (Eng)
Brandon Sulpisious Migadde

6.1 The applicant was then taken by Sanjeev Kumar before said Manish Kumar, in the adjacent room. There, the applicant's personal search and baggage search was conducted, but, it yielded nothing incriminating. The said proceedings were recorded under panchanama dated 13.05.2022 and, applicant was served a summons u/S. 67 NDPS Act. On the same day, at 15.10 hrs the applicant was produced by the DRI before the Id. Addl. CMM, 8th Court, Esplanade alongwith an application u/S.103 Customs Act. The Id. Magistrate granted permission for medical examination, X-ray and detention of the applicant for bringing out the ingested capsules *vide* Order dated 13.05.2022. The applicant was admitted to J.J. Hospital on 13.05.2022, where an X-ray confirmed the presence of multiple radio-opaque foreign bodies in his bowel loops extending to the rectum, suggestive of "Body Packer Syndrome". The applicant was discharged on 16.05.2022 after purging a total of 70 capsules in the presence of on duty officer of DRI, nurse and resident doctor. Daily, the purged capsules were handed over to the on duty officer of the DRI by the hospital, who used to collectively put it with the RDI at the end of the day.

6.2 The capsules were finally brought to the DRI office and cut opened in the presence of panchas and applicant on 16.05.2022. The white powder extracted from all the 70 capsules was kept in a plastic packet. The powder was 690 grams net. Said powder was tested with the field testing kit and, it was found positive for Cocaine. The powder and the capsule packaging material were packed, sealed and seized under panchanama dated 16.05.2022.

6.3 The applicant was served summon and, his statement under Section 67 NDPS Act recorded on 16.05.2022 revealed that he was introduced to the smuggling operation through a friend, Justine, who connected him to one Timothy, who in turn introduced him to a Nigerian national, Jerry, who arranged his travel and, through an associate in Addis Ababa, had him ingest 70 capsules at a hotel before his flight to Mumbai, promising him USD 1500 for successfully carrying the Cocaine into India, with a contact number to call upon arrival. The applicant also surrendered his mobile phone and travel documents for investigation.

6.4 The applicant was arrested on 16.05.2022 at 2000 hrs. and, produced before the Ld. CMM, Esplanade, who remanded him to judicial custody on 17.05.2022. Proceedings under Section 52A of NDPS Act were conducted on 12.07.2022 before the Id. Metropolitan Magistrate, 64th Court, Esplanade. The seized contraband was weighed, two samples of 5 grams each were drawn and sealed as 'A1-Original' and 'A1-Duplicate', and an Inventory Panchanama was drawn. Sample 'A1-Original' was sent to the CRCL, New Delhi, and the test report dated 20.09.2022 confirmed the presence of the Cocaine. Investigation culminated into filing of the complaint before the NDPS Special Court.

BAIL APPLICATION NO. 436 OF 2025

7. On 20.06.2023, specific intelligence was received that one person, i.e., applicant – Avaligbe Norbert Michel Semevo, a Beninese national holding Passport No.21PP36629, travelling from Cotonou *via* Addis Ababa by Ethiopian Airlines Flight ET640, has concealed narcotics in his body and, would land at CSMI Airport, Mumbai on 21.06.2023, at about 0200 hrs. Said information was recorded and forwarded to the superior. Further,

acting thereon, the DRI team intercepted the applicant at CSMI Airport, at about 0330 hrs, on 21.06.2023, in the presence of independent panchas and, took him to the AIU office for examination. There, the officer informed the applicant that they intend to carry out his personal search under the provisions of NDPS Act and, he has the right to be searched in the presence of Magistrate or a Gazetted Officer. The applicant replied that he would like to be searched in presence of a Gazzetted officer. The officer then called upon one person named Mr. Pratik, Supritendent of Customs, who was a Gazetted officer.

7.1 At the AIU office, Saurav Parle, Intel. Officer served upon the applicant a notice u/S. 50 NDPS Act, informing him thus :

“ Whereas there is reason to believe that some Narcotic substance, covered under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 are in your possession, and therefore, your personal search is to be conducted. You are hereby informed that under the provisions of the said NDPS Act, 1985, **you have a right** to be searched in presence of a Magistrate or a Gazetted officer.”

sign (Eng)
(Saurav Parle)
Intel. Officer

As a reply to the notice, the applicant stated that :-

I have been informed and have understood the notice of personal search under Section 50 of the NDPS Act. I hereby give my consent for carrying out my personal search in the presence of a Gazetted Officer.

It is hereby further informed that Shri Pratik, Superintendent of Customs is a Gazetted Officer”

sign (Eng)
Avaligbe Norbert Michel Semevo

7.2 The personal search and baggage search of the applicant was then conducted in the presence of the Gazetted Officer Mr. Pratik, Superintendent of Custom and panchas which yielded nothing incriminating. On being questioned, the applicant admitted to carrying contraband in his stomach and voluntarily agreed to be produced before the Ld. ACMM, 19th Court, Esplanade, for seeking permission of his medical examination. Said action was recorded under panchanama dated 21.06.2023 and, the applicant was served a summons u/S. 67 NDPS Act.

7.3 At 11.35 am, the applicant was produced before the ld. ACMM, 19th Court, Esplanade by the DRI alongwith an application u/S.103 Customs Act. The ld. Magistrate granted permission for medical examination, X-ray and detention of the applicant for bringing out the ingested capsules *vide* Order dated 21.06.2023. He was then admitted to J.J. Hospital, where, the X-ray and NCCT scan confirmed multiple elongated radio-opaque foreign bodies in his stomach and rectum. He was discharged on 30.06.2023 after purging a total of 43 pellets/capsules, which were handed over by the hospital to DRI officers in a sealed steel box, in the presence of independent panchas, a French translator and, the hospital RMO.

7.4 The box was opened at J.J. Hospital on 30.06.2023, in the presence of panchas, Dr. Rajput, Dr. Janak and Mr. Jayprakash, Sr. Intel. Officer. All 43 capsules, on being cut opened one by one, were found to contain light brown coloured sticky substance. On taking a pinch from each of the recovered light brown coloured substance and testing them individually with DFTK, each of the test conducted showed positive for presence of Heroin. All the capsules were containing similar light brown coloured sticky substance and had same pungent smell, Therefore the substance was mixed thoroughly and kept in a transparent plastic. It weighed

504 grams net and, was seized under panchanama dated 30.06.2023 along with the capsules' packaging material.

7.5 The applicant was summoned and his statement u/S.67 NDPS Act, recorded on 30.06.2023 in presence of the French translator, revealed that he was in the business of electronic-appliance trading in Cotonou and was introduced to drug trafficking by one Abraham, from whom he had purchased the 43 Heroin-filled capsules for 30 million CFA francs (paying 15 million in advance) and, that this was his fourth trip to India, having smuggled gold on a prior occasion. The applicant disclosed that his travel (visa and tickets) was arranged by one "Ghana Boss," who also gave him a fake business-invitation letter from a Chennai firm to mislead authorities, and that he intended to sell the consignment in India through one Wuilo (a Togo national residing in India) for a profit of Rs. 10,000/- per capsule. He surrendered his mobile phones and travel documents for investigation.

7.6 The applicant was arrested on 30.06.2023 at 1810 hrs. and produced before the Ld. ACMM, Esplanade, who remanded him to judicial custody till 13.07.2023. Proceedings u/S. 52A of NDPS Act were conducted on 04.08.2023 before the Id. Metropolitan Magistrate, 64th Court, Esplanade; the seized contraband was weighed; two samples of 5 grams each were drawn and sealed as 'A-Original' and 'A-Duplicate'; and, an Inventory Panchanama was drawn. The sample 'A-Original' was sent for chemical analysis, and the test report confirmed the presence of Heroin, Caffeine and Dextromethorphan. Investigation resulted in filing of the complaint before the NDPS Court.

BAIL APPLICATION NO.1221 OF 2025

8. On 24.07.2022, at 0200 hrs. when the applicant-Halima Naiga, a Uganda national, arrived at CSMI Airport by Addis Ababa to Mumbai by Ethiopian Airways Flight dated 23.07.2022, the Officers of the Air Intelligence Unit (AIU) intercepted her based on the intelligence that she might be carrying some narcotic substance. Further, the Officers inquired with the applicant as to whether she was carrying any narcotic substance. She admitted of having ingested narcotic substance in capsule form and requested for immediate medical assistance as she was feeling very uneasy and unwell. The on duty doctor present there examined her and observed no external trauma or injury, however, advised for specialist opinion at higher care for further evaluation. Smt. Ashalata Suvama, ACS served the applicant a notice u/S.50 NDPS Act on 24.07.2022 which reads thus :-

“ Whereas there is reason to believe that Narcotic Drugs/Psychotropic Substances/Controlled Substances and/or documents, articles and things which may furnish evidence of commission of an offence under the NDPS Act, 1985 are in your possession, therefore, your personal search is to be conducted by the undersigned. **If you so require**, such search will be conducted in presence of the nearest Gazetted Officer or Magistrate.”

Sign(Eng)
Ashalata Suvama
Air Custom Superintendent

8.1 The applicant received and acknowledged the notice and responded as under :-

“ I have been informed and have understood the Notice of Personal search under Section 50 of the NDPS Act, 1985. I do require that my personal search may be conducted in presence of the nearest Gazetted Officer.”

Name of the passenger:

Ms. Halima Naiga
(Sign. Eng)

8.2 On an application made by AIU officers, the Id. Additional Chief Metropolitan Magistrate, Holiday Court, Esplanade, granted permission u/S.103 of Customs Act *vide* Order dated 24.07.2022 for applicant's medical examination and detention at J.J. Hospital, to facilitate purging of ingested capsules. During hospitalisation from 24th to 26th July, 2022, the applicant ejected a total of 74 oval-shaped capsules naturally, through her rectum.

8.3 The 74 capsules were handed over by the hospital to Customs officers in a metal container secured with a lock, in the presence of independent panchas, the applicant and Dr. Ghore. The container was opened at the hospital premises and the officer took out one capsule, cut it open and, found it to contain white coloured powder in pellet form. A sample of the said powder was tested using the DFDK, which gave a positive result for Cocaine. Further, the remaining 73 capsules of similar size were cut opened individually and were found to contain white coloured powder in pellet form identical to that found in the first capsule. Thereafter, in the presence of the applicant and the panchas, the white coloured powder in pellet form found inside the 74 capsules was emptied into a transparent pouch, which was weighed and found to weigh 800 grams gross (including the 3-gram pouch) and was seized along with the capsules' packaging material under panchanama dated 27.07.2022.

8.4 On summons, the applicant's statement was recorded u/S. 67 NDPS Act on 27.07.2022, wherein she stated that she had been given the 74 capsules by one Ms. Catherine (her employer at a company in Uganda) and, her brother one Mr. Osman, at their office in Mutungo, Uganda, on 20.07.2022; that she was aware the

capsules contained illicit high-value goods and ingested them to evade detection; that her travel and hotel booking (Hotel IBIS, Vile Parle East) were arranged and paid for by Ms. Catherine; that she was to be received in Mumbai by an unknown person holding a placard bearing her name, who would guide her on the ejection process; and that, she undertook the act in exchange for financial assistance towards medical treatment for an eye ailment.

8.5 The applicant was arrested on 28.07.2022 at 0800 hrs. u/S. 104 of Customs Act for offences under the NDPS Act. The arrest memo was duly acknowledged by her. She was produced before the Id. Chief Metropolitan Magistrate, Esplanade, and remanded to judicial custody.

8.6 Proceedings u/S. 52 A (2) NDPS Act were conducted on 08.09.2022 before the Id. Metropolitan Magistrate, 64th Court, Esplanade. Two representative samples 'S-1' (secret) and 'S-2' (duplicate) of 5 grams each were drawn and sealed. The remainder 790 grams gross was re-deposited in the DS-I warehouse. Accordingly, a certificate of completion was issued. Sample 'S-1' was sent to the CECL, Vadodara, for analysis. The test report dated 09.09.2022 confirmed a positive result for the Cocaine. Accordingly, the complaint was filed before the Special Court.

Submissions and analysis :

9. In BA/1832, BA/4341 and BA/1221, the learned Advocates Mr. Parmar and Ms. Achari respectively, have submitted that there is non-compliance of Section 42 of NDPS Act and, on this ground these applicants are entitled for bail. To clarify and countenance this assertion, firstly they have pointed that in the panchanama as well as the complaint it has been recorded that on

the basis of intelligence, the Customs Officers had reasonably doubted that these applicants might have concealed some contraband in their body.

However, considering the facts of the case, in my view, mere use of the word “intelligence” as above, is not sufficient to hold that this is a case of non-compliance with Section 42. Because, “intelligence” is the broad mental capacity to learn from experience, reason, solve problems, think abstractly and, adapt to new or changing environment. It allows living things and systems to use knowledge to understand their surroundings and act effectively. These are core mental skills. Common synonym for “intelligence” include intellect, cleverness, brilliance, brainpower and smarts. Because “intelligence” has several meanings depending on context, the right word changes if you mean brain power or secret information. In the facts of the cases in hand, it appears that, on account of the past experience, the profiling of the applicants led the Officers of the AIU to suspect that the applicants was carrying narcotic. Therefore, it is their intelligence other than the secret intelligence received from third person. And having regard to the object of the Section 42, in my opinion, such an intelligence is equal to the words “personal knowledge” used in sub-Section (1) of Section 42.

10. In BA/3390, BA/5169 and BA/436 the learned Advocates contended that although the DRI Officer concerned had received the prior intelligence about carrying contraband substance by these applicants, the said Officer had not recorded that intelligence separately and forwarded it to his superior within 72 hours as required in Section 42 (1), (2) NDPS Act. To support these submissions, reliance is placed on the decision in **Karnail Singh v. State of Haryana**, reported in (2009) 8 SCC 539.

In reply, the learned APPs contended that the applicants carried the contraband substance at the airport which is a public place and, they were required to be searched at the airport itself, as provided and permitted in Section 43 NDPS Act. Therefore, compliance with the Section 42 (1), (2) was not necessary.

10.1 To resolve this controversy, it is essential to refer to Sections 42 and 43 of NDPS Act. Section 42 deals with power of entry, search, seizure and arrest without warrant or authorisation. Section 43 deals with power of seizure and arrest in public place.

10.2 Section 42 (1) provides that, any such officer (being an officer superior in rank to a peon, Sepoy or constable) of the departments of revenue intelligence as is empowered in this behalf by general or special order by the Central Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,— (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act. Sub-Section (2) states that, where an officer takes down any information in writing under sub-Section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

10.3 Section 43 reads as under :-

43. Power of seizure and arrest in public place.—Any officer of any of the departments mentioned in Section 42 may—

- (a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;
- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

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

10.4 In **Karnail Singh (Supra)** in para 35 it is held that,

“(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally *precede* the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the

information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case.”

10.5 In BA/3390, BA/5169 and BA/436, record indicate that the Secret information received by the DRI was properly recorded and forwarded to the superior. Further, said superior officer gave the authorisation to the officer concerned and instructions to constitute a team and take immediate steps under the NDPS Act. Record also shows that, after carrying out the search and seizure action, the report required u/S. 57 of NDPS Act was also conveyed to the superior officer of the DRI.

10.6 That apart, admittedly, the search and seizure action was initiated at the airport which is a public place. Since, it was

impossible to complete that action at the airport without medical help, the applicants were taken to the Government hospital, which qualifies as a “public place”. There, that action was finally completed after ejecting of the capsules. Thus, there was no break in the chain of the search and seizure action initiated at one public place and completed at the another. Therefore, in my opinion, Section 43 is applicable in these cases, not Section 42.

To support this conclusion reference may be made to the case of **Narayanaswamy Ravishankar v. Asstt. Director, Directorate of Revenue Intelligence**, reported in (2002) 8 SCC 7, therein, 5940 grams of heroin concealed in the bottom of a suitcase alleged to be belonging to the appellant was recovered when he was attempting to transport the same from the International Airport, Chennai to Singapore. The trial Court acquitted the appellant by holding that mandatory provisions like Sections 42 and 50 of NDPS Act had not been complied with. In appeal, the High Court reversed the decision and convicted the appellant. While refuting the contention on behalf of the appellant-convict that the provisions of Section 42 of the NDPS Act have not been complied with, the Hon’ble Supreme Court observed and held that, according to the documents on record and the evidence of the witnesses, the contraband was found in the suitcase and search and seizure took place at the Airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable and the question of non-compliance, if any, of the provisions of Sections 42 of the NDPS Act is wholly irrelevant.

No doubt, in **Narayanaswamy (Supra)**, the contraband was found in the suitcase, whereas, the cases in hand pertain to the contraband concealed inside the human body. However, this

distinction is immaterial, because Section 43 is applicable to both category of the cases and, as discernible from the Explanation appended to Section 43, only condition is that, the offence is committed in public place.

Useful reference can also be made to case of **Sk. Raju @ Abdul Haque @ Jagga v. The State of West Bengal**, reported in **(2018) 9 SCC 708**. Therein, on 15th November 2011, Sub-Inspector Prasanta Kr. Das, Narcotics Cell, DD (PW-2) had received information that a drug dealer would be in the vicinity of Tiljala Falguni Club, Picnic Garden Road, near Tiljala Police Station to supply narcotic drugs in the afternoon. PW-2 sought permission from the ACP, Anti-Narcotics Department, DD to organize a raid. Permission was granted by the superior officer on the same day and, a raiding team consisting of PW-2 and others reached the spot at about 12.50 pm. At around 1.40 pm, the source of the information pointed out to the appellant who was coming along Picnic Garden Road. The appellant was intercepted and detained immediately by the raiding party. The appellant was informed about the reasons for his detention and the identities of the raiding party were disclosed to him. A jute bag recovered from the appellant when searched, it found containing charas weighing 1.5 kilograms. In this background, in paragraph 13, the Hon'ble Supreme Court held that, the appellant was walking along the Picnic Garden Road. He was intercepted and detained immediately by the raiding party in front of Falguni Club, which was not a building, conveyance or an enclosed place. The place of occurrence was accessible to the public and fell within the ambit of the phrase "public place" in the Explanation to Section 43. Therefore, Section 42 had no application. Same is recently held by the Hon'ble Supreme Court in **Firdoskhan Khurshidkhan v. State**

of Gujarat reported in 2024 SCC OnLine SC 680. Therein, acting on secret information, the accused were apprehended at the ST Bus Stand, a public place, when they had arrived there to deliver the illicit substance. Same view is taken in **Konan Jacques Yao v. DRI** (B.A.No.3917/2025 Delhi HC).

11. The second limb of submissions by the learned Counsel for the applicants is that Section 50 of NDPS Act is not complied with. In this regard, at the first place, it is highlighted that in all the cases, the Section 50 notices failed to convey the applicants that they had the right of being searched in presence of an independent Gazetted Officer or Magistrate. The Constitution Bench in **State of Punjab v. Baldev Singh**, reported in (1999) 6 SCC 172, has considered various aspects of the compliance with Section 50. The Hon'ble Supreme Court has laid down the propositions of law of which the first and second are extracted below:

“57.(1) That when an empowered officer or a duly authorised officer acting on prior information is about to *search a person*, it is *imperative* for him to *inform* the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to *inform* the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.....”

11.1 In the backdrop, I have perused the notices under Section 50 NDPS Act. As evident from the notices in BA/1832, BA/4341 and BA/1221, the applicants therein were only asked as, “**If you so require**, such search will be conducted in presence of the nearest Gazetted Officer or Magistrate.” Thus, the “right” as envisaged in Section 50 was not informed to the said applicants. Therefore, it is

clear that the notices in BA/1832, BA/4341 and BA/1221 were not in compliance with Section 50. To countenance this conclusion, it is apt to refer the cited case of **K. Mohanan v. State of Kerala**, reported in **(2000) 10 SCC 222**. Therein, it was canvassed that the mandatory requirement in Section 50 of the Act was not complied with as the appellant was asked whether he required to be produced before a Gazetted Officer or a Magistrate for the purpose of search and that the appellant answered in negative. Therefore, in paragraph 6 and 7 it is held that :

“6. If the accused, who was subjected to search was merely asked whether he required to be searched in the presence of a gazetted officer or a Magistrate it cannot be treated as communicating to him that he had a right under law to be searched so. What PW 1 has done in this case was to seek the opinion of the accused whether he wanted it or not. If he was told that he had a right under law to have it (*sic* himself) searched what would have been the answer given by the accused cannot be gauged by us at this distance of time. This is particularly so when the main defence adopted by the appellant at all stages was that Section 50 of the Act was not complied with.

7. We, therefore, hold that there was non-compliance with Section 50 of the Act and consequently the evidence of search spoken to by PW 1 cannot be acted upon in the absence of any other independent evidence to show that the appellant was in possession of the contraband article.”

12. The second challenge posed to Section 50 notice in BA/1832 is that, the response of the applicant to that notice was not recorded. In this regard I have noticed that, as asserted in the complaint, the applicant had acknowledged the receipt of the notice with his signature and responded that, he was ready to be searched before a Gazetted Officer. However, the said response was neither recorded on the notice itself nor separately. The notice

only bears the signature of the applicant which is indicative of acknowledgment of its receipt. Yet, it cannot be discernible as to whether the acknowledgment was towards the fact that the applicant had understood his right conveyed by that notice; that he had declined to be searched by an independent Gazetted Officer or Magistrate; or that, he wanted to be searched by Shri Deshmukh in the presence of any other independent Gazetted Officer; or that, he had conveyed that Mr. Deshmukh himself may take his personal search. Therefore, according to Mr. Parmar, the same Gazetted Officer Shri Deshmukh, ACS, who, being part of the searching team, was not an independent Gazetted Officer, could not have conducted the personal search. Consequently, the search and seizure by Shri Deshmukh is vitiated and also doubtful.

12.1 There is substance in the submissions. Because, although the complaint mentions that after serving the notice of Section 50 NDPS Act, the personal search of the applicant was conducted in the presence of a Gazetted Officer, the name of that another Gazetted Officer is neither stated in the complaint nor in the panchanama. Secondly, considering the text of the notice of Section 50, it appears that Shri Deshmukh was part of the team for the search and seizure, thus, he was not an independent Gazetted Officer. As a result, he could not have conducted the search and seizure action without the presence of some third persons, *i.e.*, nearest Gazetted Officer or Magistrate.

12.2 This position of law is recently reiterated by the Hon'ble Supreme Court in **State (NCT of Delhi) v. Mohd. Jabir**, reported in **2024 SCC OnLine SC 4374**, that the provision sub-section (1) of Section 50 mandates that when an officer duly authorized under Section 42 is about to search a person under the provisions of Section 41, 42 or 43, he shall, if the person about to be searched so

requires, take the person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. It is observed that, it is obvious that the intent behind the provision is to ensure that the person about to be searched is made aware of the option to be taken before a third person other than the one who is conducting the search. Use of the expression “nearest” refers to the convenience as the suspect is to be searched. Similar was held by this Court 25 years back in **Mohamed Rashid Mohamedi v. V.M. Dosi, I.O., NCB**, reported in **2000 SCC OnLine Bom 995**.

12.3 Nevertheless, the seizure of the capsules containing the contraband from the possession of the applicant cannot be denied. Because, the applicant had ejected the same after he was referred for the medical and within two days from his hospitalisation under the Court’s Order. The officer of the customs had no reason to foist the capsules on him. The presence of the medicine “Antinal” with this applicant indicates that he wanted to prevent the capsules from being purged without his will and before time. This fact is well recorded in the Order of the Id. Magistrate thereby referring him for medical u/S.103 Customs Act, which is an independent provision. In **K. Mohanan (Supra)** there was non-compliance with Section 50 of NDPS Act. Consequently it is held that the evidence of search spoken to by PW 1 cannot be acted upon in the absence of any other independent evidence to show that the appellant was in possession of the contraband article. In my view, these observations indicate that if there is other independent evidence to prove possession of the contraband substance, it may be relied upon. Therefore, only for non-compliance of Section 50 (1) NDPS Act, it may not be said that the applicant was not found in possession of commercial quantity of contraband.

13. It is asserted that, the notice of Section 50 NDPS Act in BA/5169 is bad in law it being giving third option and misleading. This submission also cannot be brushed aside. Because, by that notice the applicant was informed that his personal search may be conducted before Magistrate or a Gazetted Officer. In addition, it was put forth that Shri Manish Kumar was the Gazetted officer, who, as per the panchnama dated 13.05.2022, was present in the room adjacent to the office of the DRI. And, only thereafter, the response of the applicant was recorded that he had agreed to be searched in the presence of the Gazetted officer. However, it is not clear as to whether by consenting to be searched before a Gazetted Officer the applicant had indicated that he wanted to be searched before any independent Gazetted Officer or before the Gazetted Officer Manish Kumar. However, he was directly taken before Manish Kumar.

13.1 In my view, this is against the settled law, as it implies suggestion on the part of the officer and thereby curtailing the right of the accused freely exercising his choice of being searched in front of an independent Gazetted Officer. It amounts to setting bias in the mind of the accused as to the availability of any independent Gazetted officer and thus, causing prejudice to his right u/S. 50. Therefore, such a notice is misleading as held in **Shaikh Salauddin Ibrahim v. The State of Maharashtra Through NCB, Mumbai in Criminal Appeal No. 34 of 1999 with Criminal Appeal No. 95 of 1999** dated 09/7/2003. Reference may also be made to the decision in **Dharmaveer Lekhram Sharma v. State of Maharashtra**, reported in **2000 SCC OnLine Bom 604**. Therein, the accused was first informed about his right u/S. 50. He was then informed that the Gazetted Officer is present. The accused then had declined his said right. This amounted to misleading the

accused. In this light, the Court in para 21 observed: “21 ...In our view, inclusion of Police Officers, who are also *Gazetted Officers*, in the raiding party is obvious, however, mention of the fact while apprising the accused regarding their right as contemplated under section 50 of the said Act, suggests, by necessary implication, that the accused were discouraged in opting for search by independent authority. The possibility of misleading the accused also cannot be ruled out in this regard.” Same has been enunciated in **Ranjan Kumar Chadha v. State of H.P.** reported in **2023 SCC OnLine SC 1262** in paragraph 66 (iv) that, “ While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.”

13.2 However, the seizure of the capsules containing the contraband from the possession of this applicant cannot be denied. Because, the applicant had ejected the same after he was referred for the medical examination pursuant to the Order from the Id. Magistrate. The officer of the customs had no reason to falsely implicate the applicant by foisting the capsules on him. Therefore, the view taken in the forgoing paragraph 12.3 on the basis of the case of **K. Mohanan (Supra)** may be applicable to BA/5169.

14. In BA/1832, BA/4341, BA/5169, BA/436 and BA/1221, it is submitted that the notices u/S. 50 NDPS Act do not bear signature of the panchas. Therefore, the search and seizure is doubtful. To strengthen this submission, reliance is placed on the following decisions: (i) **Uzo Stephen Samuel v. UOI & Oth.**, Cril. B.A.No.1172 of 2024 (Bom), (ii) **Kenneth Mulowa v. State of Maharashtra & Anr.**, Cril. B.A. No. 3258 of 2023 (Bom), (iii) **Eze John v. UOI**, Cril. BA No. 1754 of 2023 (Bom) and (iv) **Zaid Zahir Rana v. State of**

Maharashtra, Crl. B.A.No. 1486 of 2023 (Bom) and **(v) Nadeem Abdul Rahim v. State of Maharashtra**, Crl. B.A. No.1801 of 2021 (Bom).

14.1 However, the learned Advocates and the learned APPs/SPPs have not pointed that taking signature of panchas on Section 50 notice is a requirement of law. Even it is not so laid down in **Ranjan Kumar Chadha (Supra)**. On a careful reading of the said cited decision, it revealed that, while granting bail, although this Court has taken into consideration the absence of signature of the panchas on the notice u/S. 50, it was not the sole reason or the ground to release the accused on bail. In fact, there were other material discrepancies/aspects in the said cases which persuaded the Court to release the accused on bail.

15. The learned Advocates for the applicants submitted that the mandate of Section 100 (7) of Cr.P.C is not complied with by providing copy of the inventory of the purging of capsules and copy of the seizure panchanamas to the applicants which vitiates the prosecution as held by this Court in **Ahmed Adenwala Kola v. V.M. Dosi**, reported in **2000 SCC OnLine Bom 778**. Section 100 sub-Section (7) of Cr.P.C. (analogous Section 103 of BNSS) provides that, "When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

15.1 However, I am not persuaded to be in unison with the said submission. Because, as held by the Division Bench of this Court in **Shaikh Salauddin Ibrahim (Supra)**, in such a situation, sub-Section 100 (7) of Cr.P.C. would not be applicable as said provisions relate to search being allowed by a person residing in or in-charge of a closed place.

Secondly, the applicants have not explained as to how they got prejudiced for want of copy of the panchanama and other documents. Some explanation is necessary particularly when the panchnamas bear the applicants' signatures. In this regard, it is apt to refer the decision in **State of Punjab v. Balbir Singh**, reported in (1994) 3 SCC 299, therein the Hon'ble Supreme Court had observed as under:

“6. At this juncture we may also dispose of one of the contentions that failure to comply with the provisions of CrPC in respect of search and seizure even up to that stage would also vitiate the trial. This aspect has been considered in a number of cases and it has been held that the violation of the provisions particularly that of Sections 100, 102, 103 or 165 CrPC strictly per se does not vitiate the prosecution case. If there is such violation, what the courts have to see is whether any prejudice was caused to the accused and in appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and from that point of view evaluate the evidence on record. Under Section 100 CrPC the officer conducting search under a warrant should call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search..... Section 165(4) lays down that the provisions of this Code as to search warrants and the general provisions as to searches contained in Section 100 shall, so far as may be, apply to a search made under Section 165 also....

7. It therefore emerges that non-compliance of these provisions i.e. Sections 100 and 165 CrPC would amount to an irregularity and the effect of the same on the main case depends upon the facts and circumstances of each case. Of course, in such a situation, the court has to consider whether any prejudice has been caused to the accused and also examine the evidence in respect of search in the light of

the fact that these provisions have not been compiled with and further consider whether the weight of evidence is in any manner affected because of the non-compliance. It is well settled that the testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official but as a rule of caution and depending upon the circumstances of the case, the courts look for independent corroboration. This again depends on question whether the official has deliberately failed to comply with these provisions or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with these provisions..... It thus emerges that when the police, while acting under the provisions of CrPC as empowered therein and while exercising surveillance or investigating into other offences, had to carry out the arrests or searches they would be acting under the provisions of CrPC. At this stage if there is any non-compliance of the provisions of Section 100 or Section 165 CrPC that by itself cannot be a ground to reject the prosecution case outright. The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case.

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22. We have also already noted that the searches under the NDPS Act by virtue of Section 51 have to be carried under the provisions of CrPC particularly Sections 100 and 165. The irregularities, if any, committed like independent witnesses not being associated or the witnesses not from the locality, while carrying out the searches etc. under Sections 100 and 165 CrPC would not, as discussed above, vitiate the trial.....”

16. The learned Advocates for the applicants submitted that, on each occasion of purging, notice of Section 50 NDPS Act was

necessary. To buttress this submission, they have relied upon the decision in **Ahmed Adeyinka Adebayo v. Narcotics Control Bureau**, reported in **2005 SCC OnLine Bom 1781**. However, as held by the Division Bench of this Court in **Shaikh Salauddin Ibrahim (Supra)**, once the accused was informed at the airport of his right u/S. 50, it is not necessary to inform him at every subsequent stage of that right.

17. In BA/3390, after serving the proper notice of Section 50, Mr. V. Sunil Kumar conducted the personal search of the applicant and his baggage, but, it yielded nothing incriminating. Therefore, Mr. V. Sunil Kumar stopped the search proceedings and left. Thereafter, the DRI Officers asked the applicant whether he was carrying contraband concealed in his body. He replied that he had ingested some narcotic substance in form of capsule. Further, the applicant had voluntarily submitted himself for suitable action being taken for bringing out such goods. These fact are recorded in the panchanama, the Order of the Id. Magistrate dated 28.03.2024 and, the statement of the applicant. This was followed by the procedure u/S. 103 Customs Act, ejecting the capsules by the applicant and, seizure of the contraband in it.

Similarly, in BA/436 also after serving the notice u/S.50 NDPS Act, on being questioned, the applicant admitted to carrying contraband in his stomach and voluntarily agreed to be produced before the Court of the Id. ACMM, for medical examination. Further, the applicant voluntarily submitted himself for suitable action being taken for bringing out such goods. These fact are recorded in the panchanama dated 21.06.2023 and the statement of the applicant. This was followed by the procedure u/S.103 Customs Act, ejecting the capsules by the applicant and seizure of the contraband in it.

17.1 In view of said facts, in BA/3390 Mr. Mishra submitted that after conducting the personal search when nothing incriminating was found and then the Gazetted Officer Mr. V. Sunil Kumar had left, no fresh notice of Section 50 was given to the applicant despite his alleged admission about concealment of the capsules. In BA/436 also Ms. Palanpurwala submitted that as nothing incriminating was found in the personal search of the applicant before the Gazetted Officer, the further search and seizure action should have been preceded by a fresh notice u/S. 50 NDPS Act on admission about concealment of the capsules. Therefore, they submitted that the search and seizure of the contraband is doubtful and vitiated. The learned SPPs have opposed these submissions highlighting that since the notices of Section 50 and further action was proper in these cases, the search and seizure action cannot be doubted.

17.2 To address the aforesaid controversy raised by learned Advocates for the parties, certain other provisions of the NDPS Act and the Customs Act need consideration. First in the line is Section 79 NDPS Act which provides as under :

“79. Application of the Customs Act, 1962.—All prohibitions and restrictions imposed by or under this Act on the import into India, the export from India and transshipment of narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1962 (52 of 1962), and the provisions of that Act shall apply accordingly:

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.”

17.3 Admittedly, the said DRI Officers were proper officer as defined in the Customs Act. Section 100 Customs Act provides for power to search suspected persons entering or leaving India, etc. Section 103 thereof provides for power to screen or X-ray bodies of suspected persons for detecting secreted goods. Said Sections 100 and 103 read :

100. Power to search suspected persons entering or leaving India, etc.—(1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

(2) This section applies to the following persons, namely—
(a) any person who has landed from or is about to board or is on board any vessel within the Indian customs waters; (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft; (c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India; (d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India; (e) any person in a customs area.

103. Power to screen or X-ray bodies of suspected persons for detecting secreted goods.—[(1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of Section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall,—

(a) with the prior approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, in-cluding his consent for such screening or

scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or

(b) produce him without unnecessary delay before the nearest magistrate.]

(2) A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

(5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

(6) Where on receipt of a report [from the proper officer under clause (a) of sub-section (1) or] from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner

and such person shall be bound to comply with such direction:

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Explanation.—For the purposes of this section, the expression “registered medical practitioner” means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under Section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956).

17.4 On a plain reading of said Section 103, it appears that, it is an independent provision to deal with a special situation where the goods liable to be confiscated are secreted inside the body of person to be searched, not about his person. Therefore, sub-Section (8) of said Section 103 provides that once the accused/person subjected to be searched admits that goods liable to confiscation are secreted inside his body and, who voluntarily submits himself for the action being taken for bringing out such goods, he then even need not be subjected to the procedure provided in sub-Section (1) to (7) thereof. The expression “Magistrate” used in Section 103 of the Customs Act means a

“Judicial Magistrate”. However, as held by this Court in **Ashwinikumar Sarvansingh Chouhan v. State of Maharashtra**, reported in **2001 (4) Mh.L.J. 57**, **Rafik Shakil Shah v. The State of Maharashtra**, in **BA/4702 of 2024 (Bom.)** and **Jahid Chand Sayyed v. State of Maharashtra** in **BA/763 of 2025 (Bom.)**, the expression “Magistrate” used in Section 50 NDPS Act is an “Executive Magistrate”.

Therefore, the authorities, *i.e.*, nearest Gazetted Officer and Magistrate referred to in Section 50 NDPS Act are, undoubtedly, lower in rank to a “Judicial Magistrate”. This conclusion is fortified by the fact that, if the proper officer is intending to invoke sub-Section (1) clause (a) of Section 103 Customs Act, the proper officer then shall ensure that it is without prejudice to any of the rights available to such person under any other law for the time being in force which, in my view, also includes the right under Section 50 NDPS Act which is on par with Section 102 Customs Act, as held in **Yusuf Suleman Hattia v. V.M. Doshi**, reported in **2001 SCC OnLine Bom 459**. However, such a restriction is not imposed if the proper officer has applied for invoking sub-Section (8) of Section 103 Customs Act.

17.5 Thus, on reading the provisions of Sections 50 and 79 of NDPS Act and Sections 100 and 103 of Customs Act in harmony, in my considered view, on admission by the applicants in BA/3390 and BA/436 that they had secreted the contraband substance inside their body and, since they had voluntarily submitted themselves for suitable action being taken for bringing out the contraband substance, therefore, there was no need of fresh notice of Section 50 of NDPS Act to the applicants for their search either before a nearest Gazetted Officer or Magistrate as sub-Section (8) of Section 103 Customs Act is clearly applicable in these cases in

view of Section 79 of NDPS Act and as no provision similar to Section 103 of Customs Act is made available in the NDPS Act. In the result, I conclude that non-giving of fresh notice of Section 50 to the applicant in BA/3390 after Mr. V. Sunil Kumar left and before subjecting the applicants in BA/3390 and BA/436 to the procedure under Section 103 (8) Customs Act is not fatal and sufficient, to hold that the said search is vitiated. Secondly, there is nothing on record indicating that the contraband substance was foisted on these applicants. Thus, I hold that there is a prima facie case against the applicants of smuggling the illicit contraband.

18. In BA/4341, after serving the notice issued u/S. 50 of NDPS Act to the applicant on 28.08.2022, when he was being questioned and interrogated, the applicant allegedly admitted that he had ingested drugs in his body in the form of capsules and complained of stomach-ache. Therefore, he was immediately taken to the hospital and, admitted for the process of screening/X-ray of his body for detecting the secreted goods. Thereafter, on 29.07.2022, the procedure u/S. 103 of Customs Act was undertaken .

In BA/1221, initially, on 24.07.2022, the Officers inquired with the applicant as to whether she was carrying any narcotic substance to which she allegedly admitted of having ingested narcotic substance in capsule form and requested for immediate medical assistance as she was feeling very uneasy and unwell. The on duty Doctor present there examined her and observed no external trauma, injury and advised for specialist opinion at higher care for further evaluation. Thereafter, Smt. Ashalata Suvama, ACS served the applicant with the notice u/S.50 NDPS Act. Immediately after serving that notice, the applicant was taken to the hospital. On the same day, the procedure u/S. 103 Customs Act was undertaken.

18.1 In this factual position, the learned Advocates in BA/4341 and BA/1221 have submitted that, admittedly, the notices under Section 50 NDPS Act given to these applicants did not convey them the right of being searched before a Gazetted Officer or a Magistrate. There was no situation to invoke the provision of sub-Section (5) of Section 50. It is submitted that, the provisions of Section 103 Customs Act are not properly followed which has violated the constitutional rights of these applicants under Article 21 and 22 (2). Therefore, the evidence as to the search and seizure of the contraband is doubtful and vitiated. This is strongly objected by the learned SPPs contending that since there was emergency, these applicants were subjected to the search and seizure action invoking the provisions of sub-Section (5) of Section 50 of NDPS Act and Section 103 (1)(b) and (6) of Customs Act.

18.2 In view of said rival contentions, I have carefully perused the record and considered the provisions of sub-Section (5) of Section 50 of NDPS Act. It provides that, when an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Cr.P.C.

In BA/4341 and BA/1221, the complaint, panchanamas and statements of these applicants recorded that the applicants had stomach-ache and were feeling very uneasy and unwell respectively and therefore requested for medical help. In BA/4341, total 87 capsules weighing 1487.50 grams and in BA/1221 total 74

such capsules weighing 800 grams were carried in the stomach during a long journey. Therefore, the possibility cannot be ruled out that since these applicants experienced stomach-ache and were feeling very uneasy and unwell, therefore, they had requested for immediate medical assistance. This view is supported by the fact that in BA/1221 the doctor from the medical department of the airport had examined the applicant and advised for specialist opinion at higher care for further evaluation. Therefore, the conclusion in the forgoing paragraphs 17.4 and 17.5 is applicable to these cases.

18.3 Here it may be noted that, in sub-Section (6) of Section 103 Customs Act, there are three categories when the Magistrate can direct for suitable action for bringing out the goods secreted inside the body on the advice and under the supervision of a registered medical practitioner. Said categories are: “on receipt of a report from the proper officer under clause (a) of sub-section (1) or “from a radiologist under sub-section (5)” or “otherwise”. The word “otherwise” means “something to the contrary” or “in different circumstances”. Secondly, plain reading of said sub-Section (6) indicate that it is applicable to any person and not restricted to the person (accused) referred to in other sub-Section thereof. Meaning thereby, if in a given situation of medical emergency of the accused, it was not possible to take the accused to the nearest Gazetted Officer or Magistrate for his personal search without the possibility of his parting with possession of the contraband substance as indicated in sub-Section (5) of Section 50 NDPS Act nor to produce him without unnecessary delay before the nearest Magistrate as required by sub-Section (1) (b) of Section 103 Customs Act and therefore he was directly taken to the hospital instead of taking him to the nearest Gazetted Officer or

Magistrate, in such a situation, the said word “otherwise” permits for such action of search and seizure of the contraband secreted inside his body and such an accused is bound to comply with such direction. This view is applicable to the facts of BA/4341 and BA/1221. Further, the hospitalisation of these applicants was followed by the reasoned Orders of the Id. Magistrate passed on applications u/S. 103 of the Customs Act, supported with medical papers. Therefore, it may be said that the effect of insufficient or defective notice under Section 50 (1) of NDPS Act in BA/4341 has stopped to continue and the effect of such notice in BA/1221 was of no effect. Consequently, without full-fledged trial, the action of taking these applicants directly to the hospital may not be said to be arbitrary and violative of the provisions of NDPS Act and Customs Act. Thus, in my considered view, these cases are covered by sub-Sections (6) and (8) of Section 103 Customs Act. As a result, I hold that there is a prima facie case against the applicants of smuggling the contraband.

(Emphasis underlined)

19. Now, turning to the issue of non-compliance of Standing Instruction 1/88 (“S.I.-1/88”), Standing Order 1/89 (“S.O.-1/89”), Rules 3 and 10 of (Seizure, Storage, Sampling and Disposal) Rules, 2022 (“**NDPS-SSSD Rules**”). and with Section 52-A of NDPS Act. The crime in BA/1832, BA/5169, BA/4341 and BA/1221 were registered in 2022 when the standing Orders were in force. Whereas, the crime in BA/3390 and BA/436 were registered after the NDPS-SSSD Rules came into force on 23rd December 2022.

19.1 The learned Advocates for the applicants submitted that in BA/4341 and BA/5169, firstly, all the capsules were cut opened; the substance therein was collected in one packet; and, pinch of

that substance was then tested with drug detection kit (DDK), sealed and finally, seized.

19.2 Whereas, in BA/1832 and BA/1221, the contraband substance from only one capsule was tested with the DDK. Then the remaining capsules were cut-opened. Lastly, the substance in all the capsules was thoroughly mixed and, the said contraband substance in pellet form was collected in one packet and seized.

19.3 In BA/3390 and BA/436, the contraband substance in each of the ejected capsules was individually tested with the DIK and the result confirmed that it was heroin/cocaine. The substance in all the capsules in pellet form was then mixed, seized and sealed.

19.4 Finally, in all the six cases the Inventory procedure provided in Section 52-A was followed, during which, two samples of the said substance were taken in each case for the purpose of C.A. etc. in the presence of the learned Magistrate. This factual position is incontrovertible and is borne out by the complaints and record.

20. Therefore, and as there is some delay in the Inventory action provided in Section 52-A, the learned Advocates submitted that the said seizure and sampling procedure was in deviation of the S.I.-1/88, S.I.-1/89, and of the NDPS-SSSD Rules. Consequently, the said search, seizure and sampling of the contraband is doubtful and vitiated.

This submission is seriously opposed by the learned SPPs contending that such non-compliance cannot be seen in an isolated manner. The discrepancy in seizing and sampling the contraband must be material enough to cause prejudice to the accused. However, present are not the cases of false implication nor of prejudice to the applicants due to the sampling procedure

as above, therefore, it cannot be maintained that they are entitled for bail on that count.

21. The power to frame rules and Standing Order is vested to Central Government under Section 52-A(1) NDPS Act. The relevant paras of the said Standing Instructions 1/88 reads:

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

***1.5 Place and time of drawal of sample.**— Samples from the Narcotic Drugs and Psychotropic Substances seized must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug has been recovered, and mention to this effect should invariably be made in the panchnama drawn on the spot.*

***1.6 Quantity of different drugs required in the sample.**— The Quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.*

1.7 Number of samples to be drawn in each seizure case.–

(a) In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container. **(b)** However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in lots of 10 packages/containers. In case of seizure of Ganja and Hashish, the packages/containers may be bunched in lots of 40 such packages such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn. **(c)** Where after making such lots, in the case of Hashish and Ganja, less than 20 packages/containers remains, and in case of other drugs less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn. **(d)** If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package/containers. **(e)** While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

(Emphasis added)

21.1 Pari materia with S.I.-1/88 is the S.O.-No.1/89 dated 13.06.1989 issued under sub-Section (1) of Section 52-A of NDPS Act by the Department of Revenue, Ministry of Finance, Government of India. Section (II) thereof provides for general procedure for sampling, storage and reads as under:-

“SECTION II- GENERAL PROCEDURE FOR SAMPLING, STORAGE ETC.

2.1 All drugs shall be properly classified, carefully weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in cases of opium, ganja and charas (hasish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the content of each package given identical results on color test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of 10 packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Whereafter making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching will be necessary and no sample need to be drawn.

2.7 If such remainders are more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such a reminder package /container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample are in equal quantity is taken from a package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

2.9

3.0

(Emphasis added)

21.2 Rule 3 of the NDPS-SSSD Rules provides for classification of seized material and Rule 10 thereof provides for the procedure for drawing samples. Said Rules 3 and 10 read as under :

“3. Classification of seized material. – (1) The narcotic drugs, psychotropic substances and controlled substances seized under the Act shall be classified based on physical properties and results of the drug detection kit, if any, and shall be weighed separately.

(2) If the narcotic drugs, psychotropic substances and controlled substances are found in packages or containers, such packages and containers shall be weighed separately and serially numbered for the purpose of identification.

(3) All narcotic drugs, psychotropic substances and controlled substances found in loose form shall be packed in tamper proof bag or in container, which shall be serially

numbered and weighed and the particular of drugs and the date of seizure shall also be mentioned on such bag or container:

Provided that bulk quantities of ganja, poppy straw may be packed in gunny bags and sealed in such way that it cannot be tampered with:

Provided further that seized concealing material such as trolley bags, backpack and other seized articles shall be sealed separately.

(4) The classification, weighing, packaging and numbering referred to in this sub-rule shall be done in the presence of search witnesses (Panchas) and the person from whose possession the drugs and substances was recovered and a mention to this effect shall invariably be made in the panchnama drawn on the spot of seizure.

(5) The detailed inventory of the packages, containers, conveyances and other seized articles shall be prepared and attached to the panchnama.

10. Drawing the samples. – (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn: Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than fourty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot

and mixed together to make a composite whole from which the samples are drawn for that lot.

22. The framework of Section 52-A NDPS Act, the S.I.-1/88, S.O.-1/89 and the NDPS-SSSD Rules has been incorporated so as to provide a mechanism for seizure and sampling as well as safe and proper disposal of the seized contraband and narcotic substance, giving due regard to but not limited to factors such as the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space. The overall weightage at the stage of bail and trial in regard to non-compliance or delay of section 52-A and Standing Order/Rules has been succinctly laid down in case of **Narcotics Control Bureau v. Kashif** reported in **(2024) 11 SCC 372** and that position has been affirmed recently in **Bharat Aambale v. State of Chhattisgarh**, reported in **(2025) 8 SCC 452**. After considering various decisions in the field, in **Kashif (Supra)**, in paragraph 50 it is laid down as under :-

“50. The upshot of the above discussion may be summarised as under:

50.1. The provisions of the NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

50.2. While considering the application for bail, the court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

50.3. The purpose of insertion of Section 52-A laying down the procedure for disposal of seized narcotic drugs and

psychotropic substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the narcotic drugs and psychotropic substances.

50.4. Sub-section (2) of Section 52-A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

50.6. Any lapse or delay in compliance with Section 52-A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

(Emphasis underlined)

23. In the case of **Amani Fidel Chris v. Narcotics Control Bureau**, reported in **2020 SCC OnLine Del 2080**, cited by the learned Advocates, the accused was carrying one stroller bag of blue colour, one black colour pitthu bag and one laptop bag with laptop. Sh. G.S. Bhinder, IO firstly took the search of the stroller bag and, it was found containing four brown carton boxes and other articles. On opening of the brown carton boxes, each cartoon was found containing one door spring machine. When the said

machines were opened, the cavity in each of the spring machine was found stuffed with one brown colour packet, i.e., 4 packets in total. On further opening each of the packets, powdery substance was recovered which, on testing with the help of field testing kit, gave positive result for Heroin. The total substance recovered from all the machines was mixed properly and weighed. It was 1.5 kg. Two samples of 5 grams each were drawn out from the recovered substance and were put in two small zip lock pouches and were then placed inside separate white paper envelopes. The samples were given marks "A1" and "A2" and the remaining substance was kept in the polythene and converted into a cloth pullanda and was given mark "A". The packing material along with other articles were also kept in a white envelope and given mark "A3". A test memo in triplicate was prepared at the spot. All the case property was taken into possession and a panchnama was drawn. Railway ticket was also taken into possession.

In this background, the learned Single Judge of the Delhi High Court has held that mixing of the contents of different package/packets/container (in one lot) and then drawing the representative samples is impermissible since in that case such a sample would cease to be a representative sample of the corresponding package/packets/container. The decision of **Amani Fidel Chris (Supra)** was challenged by the NCB filing the Special Leave Petition which was dismissed by the Hon'ble Supreme Court, but, the question of law is kept open.

23.1 The principle in **Amani Fidel Chris (Supra)** is also adverted to by this Court in the case of **Ibrahim Khwaja Miya Sayyed v. State of Maharashtra**, reported in **2023 SCC OnLine Bom 2873** and by Telangana High Court in the case of **Baba Sow Chandekar v. State of Telangana**, reported in **2022 SCC OnLine TS 3425**

Recently, **Amani Fidel Chris (Supra)** is followed by this Court in **Augustin Sunderraj Nadar v. Union Of India and Anr.** (BA/5332 of 2024 [Bom]). Therein, Applicant-**Augustin Sunderraj Nadar (A1)** was intercepted on 30.01.2023 at the airport while travelling from Ethiopian Airlines to Mumbai, on the basis of intelligence information. His trolley bag was seized and searched which led to recovery of two packets of contraband 'Cocaine'. In the first packet, 12 small box packets of soap were recovered and they were marked as "W-1 to W-12". Whereas, in the second packet, 4 similarly placed white coloured small box packets were recovered having the contraband 'Cocaine'. Thus, the A1 had smuggled the alleged Cocaine embedded inside the soaps. The seizure panchnama indicated that the prosecution undertook the exercise of ascertaining the veracity of the alleged contraband and after scrapping the wax from each of the soaps and testing the alleged contraband found inside each of the soap. The test results were in the affirmative. Thereafter, as stated in the seizure panchnama, the officers of the prosecution broke the said 12 soaps into a powder, mixed them and thereafter sealed the same in accordance with law. Similar exercise was undertaken with respect to the other 4 soaps found in the second packet also.

Considering these facts juxtapose to Rules 3 and 10 of the NDPS-SSSD Rules, the learned Single Judge of this Court held that the investigating Officer is not empowered to mix the seized contraband at the outset as the Rules do not provide for the same. Rather, Rule 3 of the said Rules categorically envisages a procedure for seizure of contraband from various packets/containers when seized as also drawing of samples from each of the seized packet in accordance with law. The same procedure is adopted under Rule 10 of the NDPS-SSSD Rules. If

the investigating Officer does not follow the Rules it is a sufficient ground to arouse suspicion about the veracity of the prosecution case. Therefore, the accused was directed to be released on bail. When this decision was assailed, the Hon'ble Supreme Court did not incline to interfere with the same and hence, dismissed the SLP.

24. In **Venktesh Shiva Permal v. State of Maharashtra**, reported in **2024 SCC OnLine Bom 251**, pursuant to a secret intimation four accused were accosted including the applicant therein. The traveller bag which the applicant was carrying four packets were found. Those four packets contained ganja weighing 8 kg and 655 gms. Co-accused Sandeep was found in possession of 33 kgs and 608 gms ganja. Likewise, co-accused Surya Roy was found in possession of 20 kgs. 520 gms contraband and co-accused Mohammad was found in possession of 23 kgs and 600 gms of ganja. Thus, the aggregate of 66.455 gms was found in possession of the applicant and the co-accused who were moving together. The contraband articles were seized. Samples were collected. The accused came to be arrested. The inventory before the learned Magistrate was prepared in conformity with the provisions contained in Section 52A of the Act. The first information report and the panchanama clearly indicated that the contents of the four packets in which the contraband articles were allegedly found, were mixed, and, thereafter, samples were collected. There was an inordinate delay in compliance of the provisions contained in Section 52-A of the Act, as the alleged seizure was effected on the night intervening 31st January 2023 and 1st February 2023 and, the inventory was conducted on 10th February 2023. Therefore, it was prayed that the applicant deserved to be enlarged on bail. In reply for the Respondent-State, an endeavour was made by the learned

APP to urge that the mixing of the contraband is not a grave irregularity because as per the report of the Chemical Analyser, the substance recovered from the possession of the applicant and others was found to be *ganja*. Therefore, it was contended that any prejudice has been caused to the applicant on account of mixing of the contents of the packets is a matter for trial and cannot be considered at the stage of bail.

24.1 While dealing with the aspect of procedure as to the sampling and answering the question of bail, the learned Single Judge of this Court considered the S.I.-1/88, S.O.-1/89 and the decisions in **Parvez Haseen Khan V/s. The State of Maharashtra** (BA/3486 of 2021 [Bom]), **Ibrahim Khwaja (Supra)**, **Afsar Anwar Husain Sayyad V/s. The State of Maharashtra** (BA/157 of 2023 [Bom]), **Imran Mohamed Sharif Khan V/s. The State of Maharashtra** (BA/86 of 2023 [Bom]), and **Anand Laxman Tarde V/s. The State of Maharashtra**, (BA/3125 of 2023 [Bom]).

The learned Single Judge also adverted to the decisions in **Union of India V/s. Bal Mukund and Ors.**, reported in [(2009) 12 SCC 161], **Sumit Tomar v. State of Punjab**, reported in (2013) 1 SCC 395, **Kashif (Supra)** and **Amani Fidel Chris (Supra)**.

24.2 As regards the S.I.-1/88 and the S.O.-1/89, the learned Single Judge in paragraph 23 observed and held that,

“23. Perusal of the aforesaid Standing Instruction No. 1/88 and Standing Order No. 1/89 would make it abundantly clear that in case of seizure of the single package/container, one sample in duplicate shall be drawn. It is further provided, normally it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container, (sub-clause-a : Standing Instructions No. 1/88 and sub-Clause - 2.4 : Standing Order

No. 1/89). However, where a number of packages/containers are seized together, subject to the satisfaction that the packages are identical in all respect, packages/containers may be bunched in lots of specified packages/containers and for each lot of packages/containers one sample (in duplicate) may be drawn. The Standing Instruction, thus, also take care of the cases where a number of packages/containers are seized at the same time.

24. On a careful perusal of the decision in *Bal Mukund* (supra), it becomes evident that *Bal Mukund* (supra) did not deal with the aspect of mixture of the contents and drawing of the samples from the said mixture, in the strict sense. On the other hand, *Bal Mukund* (supra) adverted to sub-clause (e) of clause 1.7 of the Standing Instruction No. 1/88, which ordained that it should be ensured that representative drug in equal quantity is taken from each package/container and mixed together to make a composite whole from which the samples are drawn from that lot. *Bal Mukund* (supra) held that collection of 25 grams each from all the 5 bags did not amount to collection of adequate quantity from each of the bags. Therefore, the requirement of law in sub-clause (e) of the clause 1.7 of the Standing Instruction was not met. In *Bal Mukund* (supra) the emphasis was on inadequacy of the contents collected from each of the packages and not on the mixture of the contents and thereafter collection of the sample.

25. In contrast, the issue of mixing of the contents of various packages/containers and thereafter collection of sample was specifically raised in the case of *Sumit Tomar* (supra). A submission was canvassed before the Supreme Court that there was irregularity in mixing of contraband found in the bags and taking samples thereafter. The Supreme Court repelled the contention that police should have taken two samples each from two boxes without mixing, observing as under:

11. The next contention, according to the learned Senior Counsel for the appellant, is that the prosecution has committed an irregularity by mixing

up the contraband found in the bags and taking samples thereafter. We find no substance in the said argument. The present appellant was driving the car in which two bags of contraband were loaded. He further pointed out that in view of Section 15 (c) of the NDPS Act, which prescribes minimum sentence of 10 years and which may extend to 20 years where the contravention involves commercial quantity, the mixing of two bags is a grave irregularity which affects the interest of the appellant. We are unable to accept the said contention.

12. It is true that Section 15 of the NDPS Act speaks about punishment for contravention in relation to poppy straw. As per sub-section (a) where the contravention involves small quantity, the rigorous imprisonment may extend to six months or with fine which may extend to ten thousand rupees or with both whereas under sub-section (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, rigorous imprisonment may extend to 10 years and with fine which may extend to one lakh rupees. Sub-section (c) provides that where the contravention involves commercial quantity, the rigorous imprisonment shall not be less than 10 years but which may extend to 20 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. Merely because different punishments have been prescribed depending on the quantity of contraband, we are satisfied that by mixing the said two bags, the same has not caused any prejudice to the appellant. Even after taking two samples of 250 gm each, the quantity measured comes to 69.50 kg which is more than commercial quantity (small quantity 1000 gm/commercial quantity 50 kg and above). In view of the same, the contention that the police should have taken two samples each from the two bags without mixing is liable to be rejected.

26. The aforesaid judgment in case of *Sumit Tomar* (supra) has not been considered by this Court in the orders referred to above and relied upon by Mr. Satre. That, according to Mr. Satre, does not make any difference. Mr. Satre urged that the Delhi High Court in case of *Laxman Thakur* (supra) considered the submission on behalf of the prosecution based on the judgment in the case of *Sumit Tomar* (supra) and yet after placing reliance on the decision of the Supreme Court in case of *Bal Mukund* (supra), a three-judge bench judgment, did not accede to the submission on behalf of the prosecution that mixing of contents and thereafter collecting samples does not vitiate the seizure. In *Laxman Thakur* (supra) the Delhi High Court observed inter alia as under:

8. I am of the view that as mandated by the Hon'ble Supreme Court in judgment of "*Union of India v. Bal Mukund*" [(2009)12 SCC 161], standing order 1/88 has been opined to be a "requirement of law".

9. The 3 Bench judgment of *Bal Mukund* (supra) is binding on this Court.

10. Relevant portion of Standing order 1/88 reads as under:

"2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container."

11. The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

12.1 am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the

rigours of Section 37 of the NDPS Act will not be applicable.

27. I am unable to persuade myself to concur with the aforesaid reasoning of Delhi High Court in case of Laxman Thakur (supra). As noted above, Bal Mukund (supra), on which the Delhi High Court has placed reliance, dealt with a different fact situation. Clause 2.4 of the Standing Order No. 1/89 referred to in paragraph no.10 of Laxman Thakur (Supra), was not considered by the Supreme Court in case of Bal Mukund (supra). On the contrary, the Supreme Court had considered sub-clause (e) of Clause 1.7 of the Standing Instruction No.1/88 and it was on account of the inadequacy of the content of each of the bags the representative sample so collected was held to be in breach of the Standing Instruction.

28. What should be the approach of the Court? There can be no duality of opinion about the proposition that having regard to the stringent provisions against grant of bail and the severity of the punishment which the offences under NDPS Act, 1985 entail, the Court must insist scrupulous compliance of the Standing Instruction/Order. However, the nature of infraction is required to be kept in view and also the element of prejudice likely to have caused to the accused. Undoubtedly the officers are instructed that one sample from each package/container in case of seizure of more than one package/container be collected. However, the directive is preceded by the word “normally” and it is “advisable” These words, ordinarily, cannot be construed as peremptory. Since the Standing Instruction/Order use the qualifying words like “normally” and “advisable”, in my considered view, the correct approach would be to consider the impact of infraction of the directives as to the sampling alongwith other facts and circumstances of the case. Laying down a too broad proposition that the moment the investigating agency is found to have mixed the contents of the containers and thereafter collected the sample, the entire seizure is vitiated would be taking an extreme view of the matter.

29. At the same time, the cases of non-compliance with the Standing Instructions/Order and search and sampling in flagrant violation of such Instructions, cannot be brushed aside as mere irregularities. There ought to be material to show that the Instructions have been substantially complied with.

30. The decision of the Supreme Court in the case of Noor Aga v. State of Punjab, (2008) 16 SCC 417 illuminates the path. In the said case, the Supreme Court considered the aspect of contravention of the Standing Order. Adverting to the earlier decisions in the case of South Central Railway v. G. Ratnam, (2007) 8 SCC 212 and the clarification thereof by a subsequent decision in the case of Moni Shankar v. Union of India, (2008) 3 SCC 484 the Supreme Court enunciated in clear and unambiguous terms that the guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-a-vis a departmental proceeding, rigours of such guidelines may be insisted upon.

32. The Court cannot loose sight of the fact that to arrive at the satisfaction that the Accused has not committed the offence, there must be a substantial probable cause. Whether the irregularity in collection of the sample vitiates the entire seizure would thus be a matter to be decided in each case in the light of the nature of infraction of the guidelines on the touchstone of substantial compliance thereof.

33. Reverting to the facts of the case, it is imperative to note that in the seizure panchanama, it is recorded that Police Sub-Inspector Dhotre had opened all four packets which were allegedly found in possession of the applicant. Contents appeared to be ganja. Thereupon, all the contents were mixed in a white nylon bag, weighed and, thereafter, samples were collected.

34. As noted above, sub-clause (b) and (e) of the Standing Instructions 1/88 and sub-clauses 2.5 and 2.8 of the Standing Order 1/89 envisage bunching of packets/containers in lots and thereafter, drawing of

representative sample from each packet/container of that lot and mixing together to make a composite whole from which the samples are drawn for that lot. However, the principal condition is that the officer effecting the seizure must find that the packets/containers seized together are of identical size and weight bearing identical marking and contents of each packet give identical results on colour test by drug identification kit, and, thus, conclusively indicate that the packages are identical in all respects.

35. Evidently, the underlying object of the Instructions is to ensure that the sample which is collected represents the bulk, unmistakably. Invariably, in pursuance of the provisions of the Act, and the Drug Disposal Rules, the bulk is disposed. When a person is sought to be fastened with liability for possessing a particular quantity of contraband, in bulk, on the basis of the sample collected, the Court ought to have the assurance that the sample so collected represented the entire bulk. The insistence on collecting samples from each of the packets and containers stems from this objective.

36. In a situation of present nature, where the seizure panchanama does not indicate that the packets were identical and the contents were also identical and the officer effecting search had satisfied himself that the packets were identical in all respects, the mixing of the contents and thereafter collecting the samples from the said mixture, without anything more, erodes the sanctity of the samples so collected as representative samples of the bulk.

25. However, in the subsequent judgment in **Bobby Collin v. Narcotic Control Bureau**, reported in **2021 SCC OnLine Del2 536**, the Delhi High Court was dealing with 65 pellets ejected by the applicant, which were identical in shape and size. The contents of each pellet were separately subjected to a preliminary test and, upon all such tests yielding positive results, the contents were mixed homogenously and samples were thereafter drawn. The said procedure adopted is similar to the procedure adopted in **Amani**

Fidel Chris (Supra) and also in **Augustin Sunderraj Nadar (Supra)**. The judgment in **Bobby Collin (Supra)** is not considered in **Augustin Sunderraj Nadar (Supra)**. Secondly, in **Amani Fidel Chris (Supra)** the question of law is kept open.

26. The facts of BA/3390 and BA/436 in hand are very similar to the facts in **Bobby Collin (Supra)**. However, the crimes related to BA/3390 and BA/436 as well as in **Augustin Sunderraj Nadar (Supra)** were registered after the NDPS-SSSD Rules came into force. The crime related to **Amani Fidel Chris (Supra)** and **Bobby Collin (Supra)** were registered before the NDPS-SSSD Rules came into force.

27. The cases in BA/1832, BA/4341, BA/5169 and BA/1221 are governed by the S.I.-1/88 and S.O.-1/89 as the related crime were registered before the NDPS-SSSD Rules came into effect. Therefore, a step by step analysis has to be done as to what extent the compliance has been done :-

27.1 Para 2.1 in the S.O.-1/89 provides that, all drugs shall be **properly classified**, carefully weighed and sampled on the spot of seizure. The provision in Para 1.6 of the S.I.-1/88 : 2.3 in the S.O.-1/89 deals with the aspect of quantity of different drugs required in the sample. Additionally, it provides that, **the seized drugs** in the packages/containers should be well mixed to make it homogeneous and representative **before the sample in duplicate is drawn**. Para 1.7, Clause (b) of the S.I.-1/88 : para 2.5 in the S.O.-1/89 provides that, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in

lots of 10 packages/containers. In case of seizure of Ganja and Hashish, the packages/containers may be bunched in lots of 40 such packages such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn.

(Emphasis in bold)

Para 1.7, Clause (e) of the S.I.-1/88 : para 2.8 in the S.O.-1/89 provides that, while drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

27.2 In the cases in hand, the capsules were swallowed and ingested as a single batch, by a single person, for a single act of concealment, immediately before commencing the single journey, but, taking life-threatening risk of ingesting dozens of capsules containing the contraband substance, save for the purpose of smuggling a single, homogeneous consignment. The contraband substance was in shells. Since the capsules were carried in the stomach, therefore, the same were not required to be separately packed nor kept and carried in any container. These cases are categorised as “Body Packer Syndrome” as stated in BA/5169. In all the six cases, one common factor is that, the capsules seized together were homogeneous, *i.e.*, were of identical size, colour, shape etc. and the capsules were allegedly ejected in the hospital.

27.3 In the facts of BA/4341 and BA/5169, it appear that, there was no need of *inter se* classification of the capsules as they were homogeneous. Therefore, the capsules were cut opened. However, the substance in all the capsules was also found homogenous. This, according to me, is a process of classification of the

substance as provided in para 2.1 in the S.O.-1/89. Therefore, as provided in para 1.6 of the S.I.-1/88 : 2.3 in the S.O.-1/89, the contraband substance retrieved from all the capsules was collected in one packet; well mixed to make it homogeneous and representative before the sample in duplicate were drawn before the learned Magistrate; weighed; the said substance was then tested with drug detection kit; and lastly, it was sealed for the purpose of further action. It appears that, for the same reason of identical nature of the capsules and the substance found in it, in the facts of BA/1832 and BA/1221, the contraband substance from only one capsule was tested with the DIK; then the remaining capsules were cut-opened; the contraband substance therein was properly classified based on its physical properties; weighed; the substance in all the capsules was thoroughly mixed to make it homogeneous and representative before the sample in duplicate were to be drawn before the learned Magistrate; and, collected in one packet. In BA/3390 and BA/436 also the capsules seized together were homogeneous and so the contraband substance found in each capsule was tested individually and mixed. This is substantially in conformity with Rules 3 & 10 NDPS-SSSD Rules.

The aforesaid entire process of classifying and seizing the contraband substance in all the six Bail Applications was done in the presence of the panchas and the respective applicants. In certain cases even the doctors concerned were present during the said process. There is nothing on record indicating that during the process of seizure and sealing, the physical properties of the contraband substance in all these cases were interfered with or adulterated in any manner by the AIU/DRI Officers. All relevant details have been well recorded in the respective panchanamas. The applicants in these cases have not shown that the aforesaid

procedure of seizure of the contraband caused them any prejudice. The Report of C.A. clearly recorded that the substance found in the capsules was Heroin/Cocaine etc., as the case may be.

Although in **Augustin Sunderraj Nadar (Supra)** the decision in **Amani Fidel Chris (Supra)** is followed, the question of law in **Amani Fidel Chris (Supra)** is still open. Therefore, in the light of the distinct and peculiar facts of the cases in hand, considering the law enunciated in case of **Kashif (Supra)**, **Sumit Tomar (Supra)** and the observations in paragraph 28 in **Venktesh (Supra)**, I am of a prima facie view that, not preparing of lots of the capsules for the purpose of sampling as provided in para 1.7, Clause (b) of the S.I.-1/88 : para 2.5 in the S.O.-1/89 and para 1.7, Clause (e) of the S.I.-1/88 : para 2.8 in the S.O.-1/89 and 3 & 10 NDPS-SSSD Rules, may not be fatal so as to prima facie conclude that the seizure may be vitiated.

As held in **Sovraj v. State (NCT of Delhi)**, reported in **2024 SCC OnLine Del 4732**, disobedience of standing orders would, at best, cast suspicion over the veracity of the samples of the seized substance. The same can be overcome by the prosecution by producing evidence to the contrary. Therefore, opportunity must be given to the prosecution at the trial stage to prove that why certain steps were not followed and, how in the present sets of the facts it has not caused prejudiced to the applicants.

27.5 In view of the above discussion, the question whether in these six cases the provisions of Section 52-A, S.I.-1/88 and S.O.-1/89 and the NDPS-SSSD Rules were breached or not, in my considered opinion, can only be determined after the conclusion of the trial and, it would be premature to comment on the same while considering the application for bail.

28. It is submitted that there was delay in the Inventory Certification. However, nothing is pointed out from the record on behalf of the applicants showing that the said delay is sufficient to suspect that since beginning till sending the sample to the laboratory, the seized contraband and/or the sample were tampered with to create an evidence against the accused.

29. The conspectus of the above discussion is that, in BA/3390, the notice of Section 50 NDPS Act was proper. Further, after conducting the personal search of the applicant when the Gazetted Officer Mr. V. Sunil Kumar left, the AIU officer asked the applicant whether he was carrying contraband concealed in his body. He replied that he had ingested some narcotic substance in form of capsule. This was followed by the search and seizure by seeking prior permission under sub-Sections (1) (b) and (3) of Section 103 Customs Act, but, governed under sub-Section (8) of Section 103 Customs Act due to admission by the applicant that he had ingested the capsules containing the contraband and voluntarily agreed for the medical action. Same in the case with BA/436. Therefore, in these case there is no violation of Section 50 NDPS Act. In BA/3390, the contraband found in the conscious possession of the applicant is of commercial quantity. In BA/436, the contraband found in possession of the applicant was Heroin, Caffeine and Dextromethorphan. However, looking at the facts of this case and, the mind altering properties of Dextromethorphan, in my view, without hearing the evidence of the Chemical Analyser as to the cumulative effect of the three drugs on one's mind, it is difficult to say that the contraband found in possession of this applicant is not a commercial quantity. As a result, I hold that there is a prima facie case against these applicants of having committed the present offence. Consequently, the rigours of

Section 37 NDPS Act are attracted with full force. As a result, these applicants are not entitled for bail.

30. In BA/1832 the notices under Section 50 NDPS Act failed to communicate the relevant right to the applicants. In this case, the search of the applicant was conducted by Shri Deshmukh, ACS, but, he was not an independent Gazetted Officer. Therefore, it may be said that the search action by Shri Deshmukh is vitiated. However, there is nothing to doubt the process which led to ejection of the capsules containing contraband by the applicant and its seizure by Shri Deshmukh because it is in accordance with Section 103 of Customs Act. The contraband found in the conscious possession of this applicant is commercial quantity. Therefore, I hold that there is a prima facie case of the alleged offence against this applicant and consequently, the rigours of Section 37 NDPS Act are applicable.

31. In BA/5169 the initial search was not as per Section 50 of NDPS Act because the notice under that provision was misleading on account of it giving third option to the applicant of being searched before Mr. Manish Kumar, Superintendent of Customs. However, after the initial search at the airport, the applicant was produced before the Id. Magistrate and after obtaining the Order from the Id. Magistrate, the applicant was admitted in the hospital, where, he purged the capsules containing contraband. Further, said capsules were seized. This action was undertaken u/S.103 of Customs Act. Further, the contraband substance found in the capsules was tested as above. It was followed by the inventory procedure and taking samples. There is nothing on record to suspect that procedure nor the officer/s involved in the search and seizure action had any reason to falsely implicate the applicant in this case by foisting on him the said capsules.

Therefore, I hold that there is a prima facie case of smuggling commercial quantity of the contraband against this applicant. As a result, the rigours of Section 37 NDPS Act are applicable.

32. In BA/4341 and BA/1221 the notices under Section 50 NDPS Act failed to communicate the right to the applicants. Withal, it cannot be ignored that the applicants had admitted of carrying the contraband capsules inside their body and, there was medical emergency due to which it was not possible to take them to the nearest Gazetted Officer or Magistrate for their personal search without the possibility of their parting with possession of the contraband substance as indicated in sub-Section (5) of Section 50 NDPS Act nor to produce them without unnecessary delay before the nearest Magistrate as required by sub-Section (1) (b) of Section 103 Customs Act. Therefore, they were directly taken to the hospital, first, respecting their right to the life, instead of taking them to the nearest Gazetted Officer or Magistrate. It was followed by the Orders of the learned Magistrate passed under Section 103 of the Customs Act. Therefore, it is a question of trial as to whether the effect of the insufficient or defective notice under Section 50 (1) of NDPS Act in BA/4341 has stopped to continue and, whether similar notice in BA/1221 was of no consequence, or not. Consequently and, without full-fledged trial, the action of taking these applicants directly to the hospital may not be said to be arbitrary and violative of the provisions of NDPS Act and Customs Act. Thus, in my considered view, these cases are covered by sub-Sections (6) and (8) of Section 103 Customs Act.

33. Be that as it may. In BA/1832, BA/5169, BA/4341 and BA/1221, the applicants are in jail for more than four years. The trials against them have not sufficiently advanced. In the absence of such advancement, the detention of the applicants in jail is

turning punitive. Such a situation of an under-trial runs counter to the presumption of his innocence and right to speedy trial guaranteed under Article 21 of the Constitution of India. Therefore, and having regard to the overall facts and circumstances of the case, in these four cases, the applicants may be released on bail, but, subject to stringent conditions. However, the Applicants in BA/3900 and BA/436 are not entitled for bail on the ground of prolonged incarceration.

34. Noticeably, all these six cases were dealt with by the same department of the Respondent. The law that the accused to be searched under Section 50 NDPS Act is entitled to be informed of his right to be searched before a Gazetted Officer of Magistrate is well settled before 25 years in case of **Baldev Singh (Supra)** and reiterated in **Vijaysinh Chandubha Jadeja v. State of Gujarat**, reported in **(2011) 1 SCC 609**. The position has been clarified recently in **Ranjan Kumar Chadha (Supra)**. The S.I.-1/88 and S.O.-1/89 were also more than 30 years old. The main object behind it was that while dealing with the cases under the NDPS Act, there should be consistency amongst the investigating agencies about the procedure to be followed for the search, seizure and sampling etc. of the contraband substance irrespective of its nature and the circumstances in which it was found. Same is the purpose of the NDPS-SSSD Rules.

Yet, out of the six cases in hand, in only two cases the notice under Section 50 NDPS Act was found proper. The sampling procedure was also at variance. Such a handling of the legal provisions and the Standing instructions, Standing Order and the NDPS-SSSD Rules, may lead the cases to acquittal. Yet, the stake holder departments are failing in following the said provisions as required in law. Consequently, the objective of the NDPS Act is

frustrated despite it is more than 40 years old. While dealing with these cases, I have referred similar such cases decided by the Delhi High Court. Some of them had similar shortcoming in respect of the notice u/S.50 of NDPS Act. If there are procedural defects, the Government money spent and the Court's efforts made on such cases go in vain. As noted in **Union of India vs. Chidiebere Kingsley Nawchara & Ors., 2026 INSC 870**, the quantity of the contraband seized in last few years is enormous :

Sr. No.	Year	Quantity (kgs)	Value (in Crores)
1.	2021	16,09,612	25,241
2.	2022	12,53,662	19,922
3.	2023	13,89,725	17,179
4.	2024	13,30,600	27,525
5.	2025 (upto Nov.)	11,85,994	16,927

Recently, while denying the relief to accused persons involved in a large-scale international cyber fraud targeting foreign nationals, the Allahabad High Court emphasised the detrimental impact on the trust and confidence in India. However, those accused who are bringing illicit narcotic and psychotropic contraband substance from other countries to India, for them, it is only a matter of making money, but, directly impacting on social fabric and future of our country. Therefore, while investigating such cases of smuggling, transporting, carrying narcotic and psychotropic substances to India by any person including foreigners, it should be ensured that since inception, such cases are procedural compliant. This is in the interest of both, the accused and the society. Otherwise, its deleterious impact on the society will never be checked. Therefore, the Chief Commissioner Of Customs and the DRI concerned shall take a note of these cases and do needful.

35. Now, I proceed to pass following Order :-

(a) Bail Application No.3390 of 2025 and Bail Application No.436 of 2025 are rejected.

(b) B.A. No.1832 of 2025, B. A. No.4341 of 2025, Bail Application No.5169 of 2024 and Bail Application No.1221 of 2025 are allowed:-

(i) Applicants – (1) Ronald Barisigara, (2) Raymond Anane Kyeremateng, (3) Brandon Sulpisious Migadde and (4) Ms. Halima Naiga in the aforesaid applications shall be released on Bail, on their furnishing P.R. Bond in the sum of Rs.2,50,000/- each with two or more sureties in the like amount.

Before accepting the sureties, their genuineness shall be verified and subjected to lien, as observed by the Hon'ble Supreme Court in **Union of India vs. Chidiebere Kingsley Nawchara & Ors. (Supra)**.

(ii) The applicants shall mark their attendance before IO, Directorate of Revenue Intelligence (DRI), UTI Building, 13, Sir Vithaldas Thackarsey Marg, New Marine Lines, Mumbai 400020 on 1st and 16th day of each calender month between 11:00 a.m. to 2:00 p.m. till conclusion of the trial.

On breach of this condition the officer concerned shall inform the trial Court for the needful.

(iii) The applicants shall regularly attend the proceedings before the jurisdictional Court unless exempted by the said Court.

(iv) The applicants shall not tamper with the prosecution evidence and shall not influence upon the prosecution witnesses to prevent them from deposing against them.

(v) Before their release on bail, the applicants shall get their travel documents updated for their lawful stay in

India and co-operate with the Respondents for their registration in the office of The Foreigners Regional Registration Office (FRRO), Mumbai.

(vi) Applicants shall surrender their passport and visa documents with the Office of AIU/DRI concerned.

(vii) On being released from jail, the applicants shall furnish their contact numbers and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(viii) The applicants shall not indulge in identical activities for which they have been arraigned in this case.

(ix) In case of breach of aforesaid conditions, the Respondent/s will be at liberty to seek cancellation of bail from the trial Court.

(x) It is clarified that any observation made in the present Order are for the purpose of deciding the present Bail applications and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

35.1 Bail Applications stand disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)