

Narcotics Control Bureau vs Kashif on 20 December, 2024

Author: Bela M. Trivedi

Bench: Bela M. Trivedi

2024 INSC 1045

REPORT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.5544 OF 2024
(@ SPECIAL LEAVE PETITION (CrI.) No.12120 OF 2024)

NARCOTICS CONTROL BUREAU

...APPELL

VERSUS

KASHIF

...RESPONDEN

JUDGMENT

BELA M. TRIVEDI, J.

1. Leave granted.

2. The instant Appeal arises out of the impugned Order dated 18.05.2023 passed by the High Court of Delhi at New Delhi in Bail Application No. 253 of 2023, granting bail to the respondent. It assumes importance as the said Bail Application has been allowed by the High Court solely on the ground of belated compliance of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), misinterpreting the said provision, and without recording the findings as mandated in Section 37 of the said Act. Since the impugned order involving seminal issue on the interpretation of Section 52A of the said Act is likely to have wide repercussions, we deem it proper to delve into the same in little greater depth.

3. PREFATORY FACTS:

(i) As per the case of the prosecution, on 24.02.2022 an information was received by a Junior Intelligence Officer – Shri Sunil Kumar of the Appellant-Bureau with regard to a parcel bearing AWB No. 7702909491 lying with DHL Express, Raman Road, Kirti Nagar, New Delhi, suspected to contain psychotropic substances. On the basis the said information, a team of the Appellant-Bureau along with the supervisor- Mr. Ankur Singh as an independent witness reached DHL office at about 3.40 p.m. on

24.02.2022. The suspected parcel was opened, and it was found to have contained 11 lace rolls and 3 pieces of clothes. On opening one lace roll, it was found to have contained 120 strips of Tramadol tablets and each strip had 10 tablets. The remaining lace rolls were also opened and a total of 13200 strips of Tramadol tablets were found.

The spot Panchnama was prepared and the suspected contraband was seized and sealed in presence of independent witness and deposited in the Malkhana on the very day i.e. 24.02.2022.

(ii) Subsequently, on enquiry it was discovered that the parcel was booked through a firm named OGS Groups by one of the accused named Ganesh Chaudhary. The said Accused - Ganesh Chaudhary having been apprehended by the team of Appellant - Bureau on 28.02.2022, he made a disclosure statement, on the basis of which a second seizure was made at Terminal 3, IGI Airport, New Delhi from the consignment number IZ98X1W70451682510. A recovery of 15000 Zolpidem tablets was made from the said consignment. On 02.03.2022, on the basis of the disclosure statement made by the accused-Ganesh Chaudhary another recovery of 19440 Tramadol tablets was made from 3 packages at Global India Express Pvt. Ltd., which were sent by the co-accused Tamir Ali for being couriered to USA. The said case properties were also sealed and deposited in the Malkhana on the same day.

(iii) On 06.03.2022 the said Accused Tamir Ali disclosed that his three associates namely, the Respondent – Kashif and other two Accused - Rizwan and Zahid were also involved in sending NRx tablets to USA. On the basis of the information given by him, the Respondent - Accused Kashif was arrested along with the other two accused on 07.03.2022. A statement of the Respondent - Kashif was recorded from which it was disclosed that he was involved in sending the parcel to the co-accused Ganesh Chaudhary through a bus conductor. The Appellant - Bureau thereafter filed a complaint before the Special Judge, NDPS Act, Patiala House Courts, against the Respondent - Kashif and six other accused, for the offences punishable under Section 8, 22(c), 23(c) and 29 of the NDPS Act.

4. The Respondent - Accused filed the Bail Application being No. 253/2023 directly before the High Court of Delhi, which allowed the same holding inter alia that there was non-compliance of Section 51A within reasonable time, which gave rise to apprehension that sample could have been tempered with, and that in case of wrongly drawn samples, the benefit of doubt had to accrue to the accused. As transpiring from the impugned order, the learned counsel appearing for the Respondent

- Accused had restricted his arguments only to the issue of violation of the Standing Order No.1 of 88 and delay in filing the application before the Magistrate for drawing the sample under Section 52A of NDPS Act. The High Court also therefore decided the Bail application, confining itself to the issue whether the application under Section 52A was made within reasonable time and the effect of delay, if any.

5. We have heard learned Solicitor General of India, Mr. Tushar Mehta and Mr. Akshay Bhandari, learned counsel appearing for the Respondent at length on the interpretation of Section 52A of the

said Act. OBJECTS OF NDPS ACT: -

6. At the outset, it may be noted that prior to the enactment of NDPS Act, 1985 the statutory control over narcotic drugs was exercised in India through number of Central and State enactments like the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930. With the passage of time and developments in the field of illicit drug traffic and drug abuse at national and international level, many deficiencies in the said enactments were noticed by the Parliament, which led to enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic substances i.e. NDPS Act, 1985. The said Act was enacted in 1985 mainly to consolidate and amend the laws relating to narcotic drugs, and to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. Various provisions of the Act have been amended from time to time considering the need to do so by the Parliament.

7. A three-judge bench in case of Hira Singh and Another Vs. Union of India and Another¹ expressing serious concern about the problem of drug addicts and mafia at the national and international level had observed that the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of the said Act and the impact on the society as a whole. It was also observed that the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and Preamble of the Act. The precise observations made therein are reproduced hereunder:

“10.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857 the Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances, which led to enactment of the NDPS Act. As observed hereinabove, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in the Narcotic Drugs and Psychotropic Substances Act, 1985 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of the NDPS Act are 1 (2020) 20 SCC 272 required to be interpreted keeping in mind the object and purpose of the NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and Preamble of the Act.

Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance(s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted” COMPLIANCE OF THE MANDATE UNDER SECTION 37:

8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

9. In State of M.P. vs. Kajad², this Court while considering the scope of Section 37 in the light of the scheme of the Act, had observed that: -

“A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

10. Similarly, recently a three-Judge Bench in NCB vs. Mohit Aggarwal³, considering the earlier judgments on the parameters of bail available under Section 37 of the said Act held that:

“The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

11. So far as the facts of the present case are concerned, it appears that a complaint case has been filed by the NCB against the respondent and six others before the Special Court, for the offences under Section 8, 22(c), 23(c) and 29 of the NDPS Act. The respondent-accused filed the 2 (2001) 7

SCC 673 3 (2022) 18 SCC 374 bail application directly in the High Court without first approaching the Special Court, and curiously the High Court without considering as to whether the twin conditions mentioned in clause (b) sub-section (1) of Section 37 were fulfilled or not, concluded without any material on record that Section 37 was not attracted as there was non-compliance of Section 52A of the said Act within reasonable time. The Appellant - NCB having opposed the bail application, it was obligatory on the part of the High Court to record a satisfaction on the cumulative conditions namely, that there were reasonable grounds for believing that the Respondent - Accused was not guilty of the alleged offences and that he was not likely to commit any offence while on bail, as contemplated in Section 37(1)(b) of the said Act. The non-recording of such satisfaction which is mandatory in nature, has rendered the impugned order of High Court fallacious and untenable. However, since the High Court has released the respondent-accused on bail solely on the ground that there was non-compliance of Section 52A of the said Act within reasonable time, let us consider the scope and ambit as also the repercussions of non-compliance or belated compliance of the said provision.

12. Section 52A of the Act reads as under:

“52A. Disposal of seized narcotic drugs and psychotropic substances.—(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified. (2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.” POSITION PRIOR TO INSERTION OF SECTION 52A: -

13. It may be noted that though the NDPS Act came into force on 14.11.1985, Section 52A was inserted by the Act 2 of 1989, which came into force with effect from 29.05.1989. For the purpose of proper interpretation of Section 52A, it would be beneficial to peep into its historical background, and the position with regard to the search, seizure, drawing of sample, etc. prevailing prior to the insertion of Section 52A. Prior to insertion of Section 52A in the Act, the Central Government in exercise of the powers under Section 4(3) of the NDPS Act vide notification dated 17.03.1986, had constituted the Narcotics Control Bureau (NCB) conferring upon it the powers and functions of Central Government for taking measures in respect of matters contained in Section 4(2) of the Act. It was noticed by the NCB that different Investigating Officers of various enforcement agencies were adopting different procedures in drawing samples from seized narcotic drugs and psychotropic substances, etc. Therefore, with a view to bring uniformity of approach in such matters and to provide for a secured system of handling of drug samples, the NCB had issued the Standing Instructions No. 1 of 88 vide the Notification dated 15.03.1988. The said Notification of the Standing Instructions no. 1 of 88 pertained to the procedure to be followed for drawing samples from the seized narcotic drugs and psychotropic substances, numbering of samples drawn, sealing, mode of packing, dispatch of samples to the concerned laboratory for test etc. The relevant clauses of the said Standing Instructions No. 1 of 88 pertaining to the place and time of drawal of sample, disposal of Remnant sample/duplicate sample and the drug, read as under:

“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 is recovered, and a mention to this effect should invariably be made in the Panchanama drawn on the spot.

1.21. Custody of duplicate sample Duplicate sample of all seized narcotic drugs and psychotropic substances must be preserved and kept safely in the custody of the

Investigating officer alongwith the case property. Normally duplicate sample may not be used but in case of loss of original sample in transit or otherwise or on account of trial court passing an order for a second test, the duplicate sample will be utilized. 1.22. Disposal of Test Memo As soon as the test result in original or duplicate or both test memos are received, the same will be filled in the Court, trying the case, alongwith, chargesheet/complaint by the Investigating officer. He will keep an attested copy of the same in his case file. 1.23. Disposal of Remnant sample/duplicate sample and the drug At present, the remnant sample/duplicate sample and seized narcotic drugs and psychotropic substances can be disposed of after the proceedings of prosecution is over or by obtaining an order from such court under Section 110 of the Customs Act, 1962 and/or 451 of Cr.P.C. While obtaining the order of the court under the aforesaid section it is necessary that specific order in respect of the remnant sample/ duplicate sample is also obtained.

After such order has been obtained, the drug or substance along with the samples including remnants shall be disposed of in the manner prescribed. Please acknowledge the receipt of the standing order."

14. Thereafter, recognizing the importance of dispatch, transit, receipt, safe custody, storage, proper accounting and disposal destruction of the seized/confiscated drugs and the need for evolving a uniform procedure, the NCB issued the Standing Order No. 2 of 88 vide the Notification dated 11.04.1988. The NCB vide the said Standing Order formulated the procedure to be followed by all the Central and State drug law enforcement agencies for seizure, sampling, storage etc. It was mentioned in clause 3.1 thereof that "all drugs should be properly classified, carefully weighed and sampled on the spot of seizure." The clause 3.2 thereof stated that "the procedures set out in Standing Order No.1 of 88 should be scrupulously followed". The clause 5.2 directed the respective enforcement agencies to constitute a three-member Committee, making it responsible to advise the respective investigating officers on the steps to be initiated for expeditious disposal of the seized drugs.

NECESSITY FOR INSERTION OF SECTION 52A AND THE POSITION THEREAFTER:

15. The necessity to insert Section 52A arose in view of the International Convention of 1988 held by the United Nations, which adopted "United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988". Another convention under the aegis of South Asian Association for Regional Cooperation (SAARC) also came to be held in December, 1988, in which it was resolved that Member- States will take measures for early destruction or lawful disposal of narcotic drugs and psychotropic substances. India being Member-State, was a signatory to the said conventions. The Central Government therefore introduced a Bill in Parliament, i.e., the Narcotic Drugs or Psychotropic Substances (Amendment) Bill, 1988, specifically mentioning that it was for giving effect to the International Conventions. Resultantly, the statutory provision as contained in Section 52A for disposal of seized narcotic drugs and psychotropic substances came to be inserted in the Act with effect from 29.05.1989.

16. The insertion of Section 52A was followed by the Standing Order No. 1 of 89 dated 13.06.1989. The said Standing Order No. 1 of 1989 came to be issued by the Central Government in exercise of the powers conferred by sub-section (1) of Section 52A of the said Act as it was considered necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances should be disposed of after their seizure, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space. Clause 2.1 of the said Standing Order No.1 of 1989 stated that all drugs shall be properly classified, carefully weighed and sampled on the spot of seizure. The said standing order also provided about the drawal of samples on the spot of recovery, quantity to be drawn for sampling, etc. It also provided a detailed procedure with regard to the method of drawal of representative samples, storage of samples, dispatch of samples, preparation of inventory, etc., and also provided for an early disposal of drugs and other articles by having recourse to the provisions of sub- section (2) of Section 52A of the Act. The relevant part of the Standing Order No. 1/89 reads as under: -

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

3.1. Preparation of inventory After sampling, a detailed inventory of such packages/containers shall be prepared for enclosure with the panchnama. Original wrappers shall also be preserved for evidentiary purposes.

SECTION III – RECEIPT OF DRUGS IN GODOWNS AND PROCEDURE 3.2. Custody of drugs in godowns – storage procedure All drugs shall invariably be stored in safes and vaults provided with a double-locking system. Agencies of the central and state governments may specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc. 3.3. Maintenance of godown and procedure for deposit of drugs Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godown within 48 hours of such seizure, with a forwarding memo indicating NDPS Crime Number as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total number of packages/containers etc. 3.8. Prescription of periodical reports and returns The heads of the respective enforcement agencies (both central and state governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs. 3.9. Pre-trial disposal of drugs Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub- section (2) of Section 52A of the Act.

SECTION IV – ACTION TO BE TAKEN BY POLICE AND OTHER EMPOWERED OFFICERS FOR PRE-TRIAL DISPOSAL

4. Follow-up action to be taken by police and empowered officers Application to magistrate for pre-trial disposal Where any narcotic drug or psychotropic substance has been seized and forwarded

to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer, referred to in paragraph 3.3 of the Order shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and such other particular as may be considered relevant to the identity of the aforesaid drugs in any proceedings under the Act and make an application to any magistrate for the purpose of:

- (a) Certifying the correctness of the inventory so prepared; or
- (b) Taking, in the presence of such magistrate, photographs of such drugs or substances and certifying such photographs as true; or
- (c) Allowing to draw representative samples of such drugs or substances, in the presence of such magistrate, and certifying the correctness of any list of samples so drawn.

4.1. Magistrate to allow application Where an application is made under sub section (2) of Section 52A of the Act, the magistrate shall, as soon as may be, allow the application.

4.2. Courts to treat documents and list of samples certified by magistrate as “primary evidence.” Notwithstanding anything contained in the Indian Evidence Act, 1872 (10 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act shall treat the inventory, the photographs, or narcotic drugs or psychotropic substances and any list of samples drawn under subsection (2) *ibid* and certified by the magistrate, as primary evidence in respect of such offence.

4.3. Grounds to be enumerated in application.

While preferring an application under section 52A to any magistrate, emphasis may be laid on “expediency of disposal”. The grounds that may be highlighted may pertain to:

- (i) Risk of pilferage, theft and substitution;
- (ii) Constraints of storage and hazardous nature;
- (iii) High potential and vulnerability of abuse;
- (iv) High temptations to traffickers;
- (v) Diminution in the value of other articles (including conveyances) due to long storage, etc.”

17. The Central Government thereafter had issued a Notification dated 16.01.2015 i.e. G.S.R. 38(E) in exercise of the powers conferred by Section 52A, specifying the narcotic drugs and psychotropic

substances, controlled substances and conveyances to be disposed of, the officers who shall dispose them of and the manner of their disposal.

18. It is very much pertinent to note that the Standing Instructions No. 1 of 88 dated 15.03.1988 and the Standing Order No. 2 of 88 dated 11.04.1988 issued by the NCB, and the Standing Instructions No. 1 of 89 dated 13.06.1989 and G.S.R. 38(E) dated 16.01.2015 issued by the Central Government, having been issued in exercise of its powers conferred under the Act, had the statutory force and the procedure mentioned therein with regard to the classification, weighing and drawing of samples on the spot of seizure and disposal of the remaining drugs, substances and other articles etc. remained in force and were acted upon all throughout till the Notification dated 23.12.2022 came to be issued by the Central Government, in exercise of the powers conferred by Section 76 read with Section 52A of the said Act.

19. Vide the said Notification, the Rules called “Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022” came to be published. The said Rules provided for the procedure to be followed for the Seizure and Storage, Sampling, Disposal of the seized material. The Rule 29 of the said Rules, repealed the Standing Order No. 1 of 88 dated 15.03.1988, Standing Order No. 2 of 88 dated 11.04.1988 issued by the NCB, and the Standing Order No.1 of 89 dated 13.06.1989 and the G.S.R. 38(E) issued by the Government of India, alongwith the other Notifications. However, sub- rule (2) of Rule 29 stated that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Standing Order or notification repealed by sub-rule (1), shall in so far as it is not inconsistent with the provisions of the said Rules, be deemed to have been done or taken under the corresponding provision of the said Rules.

20. Now, so far as Section 52A is concerned, the language employed therein itself is very clear that the said provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. Apart from the plain language used in the said section, its Heading also makes it clear that the said provision was inserted for the Disposal of the seized narcotic drugs and psychotropic substances. As per the well settled rule of interpretation, the Section Heading or Marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The Section Heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble.⁴

21. The insertion of Section 52A with the Heading “Disposal of seized narcotic drugs and psychotropic substances” along with the insertion of 4 Eastern Coalfields Limited vs. Sanjay Transport Agency and Another, (2009) 7 SCC 345 the words “to provide for the forfeiture of property derived from or used in, illicit traffic in narcotics drugs and psychotropic substances, to implement the provisions of International Conventions on Narcotics Drugs and Psychotropic Substances”, in the long title of the NDPS Act, by Act 2 of 1989 w.e.f. 29.05.1989, leaves no room of doubt that the said provision of Section 52A was inserted for an early disposal of the seized narcotic

drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. The Heading of Section 52A i.e. Disposal of seized narcotic drugs and psychotropic substances delineates the object and reason of the insertion of said provision and such Heading cannot be underscored. From the bare reading of Section 52A also it is very much discernable that sub-section (1) thereof empowers the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, to specify narcotic drugs, psychotropic substances for the purpose of their disposal as soon as may be after their seizure, by such officer and in such manner as the Central Government may determine after following the procedure specified in sub-section (2).

22. Sub-section (2) of Section 52A prescribes the procedure to be followed by the authorized officers for the disposal of such contraband narcotics drugs and psychotropic substances at the pre-trial stage. As per the procedure laid down in the said sub-section, where any narcotics drug, psychotropic substance or controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the concerned officer authorized as per sub-section (1) has to prepare an inventory of such drugs or substances in the manner as stated in the said provision, and then make an application to the Magistrate for the purpose of (a) certifying the correctness of the inventory so prepared; or (b) taking, in presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn. Sub-section (3) requires that an application made under sub-section (2), should be allowed by the Magistrate as soon as may be, and sub-section (4) thereof states that such inventory, photographs and the list of samples so drawn, if any, under sub-section (2) and certified by the Magistrate shall be treated as the primary evidence in respect of the offence under the Act.

23. As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub-section (1) thereof, for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under sub-section (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an “irregular proceeding” and an “illegal proceeding.” While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings.

24. Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the

provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned officer authorised to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act.

25. It is significant to note that as per Section 54 of the said Act, the courts are entitled to presume, unless and until the contrary is proved that the accused had committed an offence under the Act in respect of any narcotic drug or psychotropic substance etc. for the possession of which he failed to account satisfactorily. Therefore, unless such statutory presumption is rebutted by the accused during the course of trial, there would be a prima facie presumption that the accused had committed the offence under the Act, if he is found to have possessed the contraband drug and substance, and if he fails to account satisfactorily, as contemplated in the said provision of Section 54. An anomalous situation would arise if a non-compliance or delayed compliance of Section 52A is held to be vitiating the trial or entitling the accused to be released on bail, though he is found to have possessed the contraband substance, and even if the statutory presumption is not rebutted by him. Such could not be the intention of the legislature.

26. It is further pertinent to note that as per the settled legal position even the evidence collected by an illegal search or seizure could not be excluded or discarded. Whether the evidence collected by an illegal search or seizure is admissible or not has been considered by this Court in a series of decisions and one of the earliest decisions is the decision of the Constitution Bench in case of *Pooran Mal Vs. Director of Inspection (Investigation) New Delhi and Others* (supra). It was observed therein that:

“24. So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure.”

27. Of course, the subsequent Constitution Bench in case of *State of Punjab vs. Baldev Singh*⁵, while considering the question whether the procedure laid down under Section 50 of NDPS Act is mandatory or not, has explained that the judgment in *Pooran Mal* case cannot be understood to have laid down the law that an illicit article seized during a search of a person on a prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illicit search. The Constitution 5 (1999) 6 SCC 172 Bench therefore further held that the question of admissibility of evidence, which may be relevant to the question in issue, has to be decided in the context and the manner in which the evidence was collected and was sought to be used.

28. In case of *State of H.P. vs. Pirthi Chand and Another* ⁶ this Court following the observations made by the Constitution Bench in *Pooran Mal* case held as under: -

“4. It is to be seen whether the accused has been afforded such a right and whether the authorized officer has violated the mandatory requirement, as a question of fact, has to be proved at the trial. In *Pooran Mal v. Director of Inspection (Investigation)* [(1974) 1 SCC 345: 1974 SCC (Tax) 114] a Constitution Bench of this Court had held that power of search and seizure, is, in any system of jurisprudence, an overriding power of the State for the protection of social security and that power is necessarily regulated by law. A search by itself is not a restriction on the right to hold and enjoy property, though seizure is a temporary restriction to the right of possession and enjoyment of the property seized. However, the seizure will be only temporary and limited for the purpose of the investigation. The power of search and seizure is an accepted norm in our criminal law envisaged in Sections 96 to 103 and 165 of the Criminal Procedure Code, 1973 (for short “the Code”). The Evidence Act permits relevancy as the only test of admissibility of evidence. The evidence obtained under an illegal search and seizure does not exclude relevant evidence on that ground. It is wrong to invoke the spirit of the Constitution to exclude such evidence. The decisions of the American Supreme Court spelling out certain constitutional protections in regard to search and seizure are not applicable to exclude the evidence obtained on an illegal search. Courts in India refuse to exclude relevant evidence merely on the ground that it is obtained by illegal search and seizure. When the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search and seizure is not liable to be shut out. Search and seizure is not a new weapon in the armoury of those whose duty it is to maintain social security in its broadest sense.

6 (1996) 2 SCC 37 If the safeguards are generally on the lines adopted by the Code, they would be regarded as adequate and render the restrictions imposed as reasonable measures.

5. It would be seen that the organised traffic in contraband generates deleterious effect on the national economy affecting the vitals of the economic life of the community. It is settled law that illegality committed in investigation does not render the evidence obtained during that investigation inadmissible. In spite of illegal search property seized, on the basis of said search, it still would form basis for further investigation and prosecution against the accused. The manner in which the contraband is discovered may affect the factum of discovery but if the factum of discovery is otherwise proved then the manner becomes immaterial”.

29. Again, in *Khet Singh vs. Union of India* (supra) this Court after considering number of earlier decisions held that:

“16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out

whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence”.

30. In *State of Punjab Vs. Makhan Chand* (supra), this Court upheld the conviction, where the contraband was recovered during a chance recovery, even though the procedure under Section 52A was not followed. It was observed therein in para 10:

“10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A (1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.” “11. Secondly, when the very same Standing Orders came up for consideration in *Khet Singh v. Union of India* [(2002) 4 SCC 380] this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.”

31. From the above decisions, the position that emerges is that this Court in catena of decisions, has approved the procedure of spot searches and seizures in compliance with the Standing Orders and the Notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of F.S.L. reports etc. Even otherwise, in view of the law laid down by the Constitution Benches in case of *Pooran Mal* and in case of *Baldev Singh*, any procedural illegality in conducting the search and seizure by itself, would not make the entire

evidence collected thereby inadmissible. The Court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the concerned officer authorised in making application to the Magistrate as contemplated under Section 52A of the Act.

32. Significantly, the Authorised Officer can make the application under sub- section (2) of Section 52A for three purposes – (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such magistrate, photographs of the seized drugs, substances and conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate, and certifying the correctness of any list of samples so drawn. The use of the conjunction “OR” made in between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision muchless its non-compliance fatal to the case of prosecution.

33. Though it is true that the inventory certified, photographs taken and the list of samples drawn under sub-section (2) has to be treated by the Court as primary evidence in view of sub-section (3), nonetheless the documents like Panchnama, seizure memo, arrest memo etc. prepared by the Investigating Officer on the spot or during the course of investigation are also primary evidence within the meaning of Section 62 of the Evidence Act, carrying the same evidentiary value as any other primary evidence. Such primary evidence with regard to Search and Seizure of the contraband substance could not be overlooked merely because some lapse or non-compliance is found of Section 52A of the Act.

34. In our opinion reliance placed by the High Court on the decision of this Court in Union of India Vs. Mohanlal and Another⁷, is thoroughly misplaced. In the said case, the issue of pilferage of contraband was the main issue. The Court after noticing the non-compliance of the procedure laid down in the Standing Order No. 1 of 89 dated 7 (2016) 3 SCC 379 13.06.1989, and the possibility of the pilferage of contraband goods and their return to the market place for circulation, had appointed an amicus curiae for making a realistic review of the procedure for search, disposal or destruction of the narcotics and remedial steps that need to be taken to plug the loopholes, if any. The Court, thereafter, had raised the queries with regard to the seizure, storage, disposal/destruction and also with regard to the judicial supervision in respect of the seized narcotic drugs and psychotropic substances. The prime focal in case of Mohanlal was the disposal of seized contraband goods as contemplated in Section 52A. Though it held that the process of drawing samples has to be done in presence of and under the supervision of the Magistrate, it nowhere held that non-compliance or delayed compliance of the procedure prescribed under Section 52A (2) would vitiate the trial or would entitle the accused to be released on bail.

35. None of the provisions in the Act prohibits sample to be taken on the spot at the time of seizure, much less Section 52A of the said Act. On the contrary, as per the procedure laid down in the Standing Orders and Notifications issued by the NCB and the Central Government before and after the insertion of Section 52A till the Rules of 2022 were framed, the concerned officer was required to take samples of the seized contraband substances on the spot of recovery in duplicate in presence of the Panch witnesses and the person in whose possession the drug or substance recovered, by drawing a Panchnama. It was only with regard to the remnant substance, the procedure for disposal of the said substance was required to be followed as prescribed in Section 52A.

36. At this stage, we must deal with the recent judgments in case of Simarnjit vs. State of Punjab, (Criminal Appeal No.1443/2023), in case of Yusuf @ Asif vs. State (2023 SCC Online SC 1328), and in case of Mohammed Khalid and Another vs. State of Telangana ((2024) 5 SCC 393) in which the convictions have been set aside by this Court on finding non-compliance of Section 52A and relying upon the observations made in case of Mohanlal. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. Therefore, we have considered the legislative history of Section 52A and other Statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or non-compliance of Section 52A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in case of Pooran Mal and Baldev Singh must take precedence over any observations made in the judgments made by the benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.

37. It hardly needs to be reiterated that every law is designed to further ends of justice and not to frustrate it on mere technicalities. If the language of a Statute in its ordinary meaning and grammatical construction leads a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence. It is equally settled legal position that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law. In Maxwell on Interpretation of Statutes, Tenth Edition at page 229, the following passage is found: -

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.”

38. As observed by this Court in *K.P. Varghese vs. Income Tax Officer, Ernakulam and Another*⁸, a statutory provision must be so construed, 8 (1981) 4 SCC 173 if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of statutory provision produces a manifestly absurd and unjust result, the Court may modify the language used by the Legislature or even do some violence to it, so as to achieve the obvious intention of the Legislature and produce a rational construction and just result.

39. The upshot of the above discussion may be summarized as under:

(i) The provisions of 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.

(ii) 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.

(iii) The purpose of insertion of Section 52A 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.

(iv) Sub-section (2) of Section 52A 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.

(v) 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.

(vi) Any lapse or delay in compliance of Section 52A 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.

40. The impugned order based on the inferences and surmises, in utter disregard of the statutory provision of the Act and in utter disregard of the mandate contained in Section 37 of the Act, and

granting bail to the accused merely on the ground that the compliance of Section 52A was not done within reasonable time, is highly erroneous and deserves to be quashed and set aside. Since, the High Court has not considered the application of the respondent on merits and has also not considered the mandatory requirement under Section 37(1)(b) of the Act, we deem it appropriate to remand the case to the High Court for deciding the bail application of the respondent afresh on merits and in accordance with law.

41. Since, we are remanding the matter for fresh consideration on merits, we are extending the period of bail granted to the respondent for four weeks, with a request to the High Court to decide the application afresh as expeditiously as possible, and preferably within four weeks. In case the same is not disposed of within four weeks it shall be open for the High Court to pass appropriate orders with regard to extension/ non- extension of the said period.

42. Having regard to the facts and circumstances of the case, we request the Chief Justice to place the Bail application of the Respondent before the Bench other than the Bench which has passed the impugned order, for deciding it afresh.

43. The Appeal stands allowed.

.....J. [BELA M. TRIVEDI] J.

[SATISH CHANDRA SHARMA] NEW DELHI;

DECEMBER 20th, 2024.