

PUNJAB AND HARYANA HIGH COURT

Before :- Fateh Deep Singh, J.

CRM No. 32387 of 2015 in CRA-S No. 840-SB of 2015, CRM No. 21189 of 2016 in CRA-S No. 227-SB of 2015, CRM No. 28932 of 2016 in CRA-S No. 3148-SB of 2015, CRM No. 29876 of 2016 in CRA-S No. 4134-SB of 2015, CRM No. 40534 of 2016 in CRA-S No. 5246-SB of 2015, CRM No. 7780 of 2017 in CRA-S No. 71-SB of 2016, CRM No. 9400 of 2017 in CRA-S No. 323-SB of 2015, CRM No. 11106 of 2017 in CRA-S No. 200-SB of 2017, CRM No. 11773 of 2017 in CRA-S No. 766-SB of 2017, CRM No. 11887 of 2017 in CRA-S No. 1413-SB of 2017, CRM No. 12081 of 2017 in CRA-S No. 4055-SB of 2016, CRM No. 13024 of 2017 in CRA-S No. 2933-SB of 2016, CRM No. 13089 of 2017 in CRA-S No. 985-SB of 2017, CRM No. 13782 of 2017 in CRA-S No. 723-SB of 2016, CRM No. 14822 of 2017 in CRA-S No. 1531-SB of 2016, CRM No. 20163 of 2017 in CRA-S No. 2398-SB of 2017, CRM No. 20349 of 2017 in CRA-S No. 1972-SB of 2017, CRM No. 20422 of 2017 in CRA-S No. 3921-SB of 2013, CRM No. 20427 of 2017 in CRA-S No. 1529-SB of 2017, CRM No. 20809 of 2017 in CRA-S No. 750-SB of 2014, CRM No. 22333 of 2017 in CRA-S No. 4894-SB of 2015, CRM No. 25342 of 2017 in CRA-S No. 2574-SB of 2017, CRM No. 27346 of 2017 in CRA-S No. 2280-SB of 2017, CRM No. 13460 of 2017 in CRA-S No. 1616-SB of 2017, CRM No. 14370 of 2017 in CRA-S No. 185-SB of 2017, CRM-M No.23054 of 2017. D/d. 29.1.2018.

Rakesh Kumar and anr. - Appellants

Versus

State of Punjab and anr. - Respondents

For the Applicants/Appellants :- Mr. APS Deol, Senior Advocate assisted by Mr. Vishal Rattan Lamba, Mr. A.S. Brar, Mr.Amaninder Preet, Mr. Deepinder Brar, Mr. Mohd. Yousaf, Mr.Gurpal S. Sandhu, Mr.Pardeep Panwar, Ms.Amanpreet Kaur Sabharwal, Mr. B.S. Kathuria, Mr. Satwant S. Rangji, Mr. P.S. Sekhon, Mr. L.S. Sekhon, Mr.Dilpreet S. Gandhi, Mr. Karanjit Singh, Mr. Kashish Garg for Mr. Bir Davinder Singh, Mr.Mohinder Kumar, Mr. Rahul Bhargava, Mr. Harchand S. Batth, Mr.Arshdeep S. Sivia, Mr.Jashandeep S. Sandhu, Mr.Mohit Garg, Mr.Sumit S. Bairagi for Mr.Sandeep K. Passi, Mr.A.K. Walia, Mr.Ashok Bhardwaj, Mr.Ashish Aggarwal, Mr. S.S. Rana and Mr.P.P.S. Duggal, Advocates.

For the Respondent/State :- Mr. B.S. Sewak, Addl. Advocate General, Punjab.

Narcotic Drugs and Psychotropic Substances Act, 1985 Sections 21 and 22 Drugs and Cosmetics Act, 1940 Section 3.

[Para]

Cases Referred :

[Durgo Bai v. State of Punjab, 2004\(3\) RCR \(Criminal\) 809.](#)

[E.Micheal Raj v. Narcotic Control Bureau, \(2008\) 2 SCC \(Cri\) 558.](#)

Gurpreet Singh @ Tuli v. State of Punjab, CRM-M No.23054 of 2017.

[Hira Singh v. Union of India, \(2017\) 8 SCC 162.](#)

[Inderjeet Singh @ Laddi v. State of Punjab, 2014\(3\) RCR \(Criminal\) 953.](#)

[Janta Singh v. State of Punjab, 1996\(1\) RCR \(Criminal\) 1.](#)

[Main Pal v. State of Haryana, 2010 AIR \(SC\) 3292.](#)

JUDGMENT

Fateh Deep Singh, J. - Since in all these criminal appeals arising out of various judgments, the appellants who have been convicted either with the aid of Section 21 or 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, `NDPS Act') to varying sentences of imprisonment and fine, a common question of law had arisen and to prevent expression of divergent opinions and to hold uniformity in the case of each individual appellant for suspension of sentences before this Court as on date and that might be there in the times to come, necessitates comprehensive adjudication of the same regarding suspension of their respective sentences.

The details of the cases with offences and alleged recoveries along with convictions are given below in a tabular form to make the things more clear:

S.No.	Case No.	Name of accused seeking SOS	Recovery	Conviction	Judgment by & date
1.	CRA-S-840-SB-2015	Rakesh Kumar	3500 tablets of Microlit containing Diphenoxylate salt	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Special Judge, Sri Muktsar Sahib – 18.11.2014
2.	CRA-S-227-SB-2015	Anwar Khan @ Soni	3.900 kgs of intoxicating powder containing Dextropropoxyphene salt	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Sangrur – 17.11.2014
3.	CRA-S-3148-SB-2015	Monnu	81.76 gm salt Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Special Judge, Ferozepur – 04.06.2015
4.	CRA-S-4134-SB-2015	Dharmu	Diphenoxylate powder in commercial quantity	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Ludhiana – 25.05.2015
5.	CRA-S-5246-SB-2015	Gurwinder Singh	70 gms containing Diphenoxylate salt	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Ludhiana – 10.11.2015
6.	CRA-S-71-SB-2016	Mohd. Akhtar @ Soni	19110 mls of intoxicating liquid, 10 capsules of Parvon Spas, 10 tablets of Euphoria	U/s 22(a) & 22(c) of NDPS Act – 1 year RI & L 5000/- fine and 10 years RI & L 1.00 lac	Judge, Special Court, Sangrur – 09.12.2015

				fine.	
7.	CRA-S-323-SB-2015	Munish Kumar	15 Vials of Rexcof	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Bathinda – 09.01.2015
8.	CRA-S-200-SB-2017	Gudawar Ram @ Gabbu	60 gms intoxicating powder containing Diphenoxylate salt	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, SBS Nagar – 09.12.2016
9.	CRA-S-766-SB-2017	Baljinder Singh @ Banty	7500 mls of Corex syrup containing Codeine phosphate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Sangrur – 20.12.2016
10.	CRA-S-1413-SB-2017	Sukhraj Kaur @ Raj	120 bottles of Rexcof containing Codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Sangrur – 08.03.2017
11.	CRA-S-4055-SB-2016	Gurpreet Singh @ Gopi	25 gms Heroin & 250 gms intoxicating powder containing Alprazolam	U/s 21 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Amritsar – 06.09.2016
12.	CRA-S-2933-SB-2016	Salwinder Singh @ Shinda	320 gms intoxicating powder containing Diphenoxylate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Tarn Taran – 09.08.2016
13.	CRA-S-985-SB-2017	Karamjit Singh @ Karma	10 Vials of Rexcof containing Codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Faridkot – 04.01.2017
14.	CRA-S-723-SB-2016	Mandeep Singh @ Mani	300 gms intoxicating powder containing Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Addl. Sessions Judge, Amritsar – 23.12.2015
15.	CRA-S-1531-SB-2016	Jagmohan Singh @ Mithu	100 gms intoxicating powder containing Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Amritsar – 10.03.2016
16.	CRA-S-2398-SB-2017	Nachhatar Singh @ Sonu	60 gms intoxicating powder containing Diphenoxylate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Tarn Taran – 16.05.2017
17.	CRA-S-1972-SB-2017	Gaurav Bajaj (the other appellant Manpreet Singh)	50 bottles of Rexcof syrup & 250 tablets of Carisona – from Gaurav Bajaj; 45 bottles of Rexcof syrup & 200 tablets of Carisona – from Manpreet Singh.	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Fazilka – 17.03.2017
18.	CRA-S-3921-SB-2013	Gurpreet Singh	19 vials of Rexcof, 1200 tablets of Pinotil and 450 tablets of Alprazolam	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Bathinda – 24.10.2013

19.	CRA-S-1529-SB-2017	Jaspal Singh	12 vials of Rexcof containing codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Sangrur – 07.03.2017
20.	CRA-S-750-SB-2014	Sanjiv Kumar & Paramjit Singh @ Pamma	1300 tablets weighing 101.400 gms from Sanjiv Kumar; 400 tablets weighing 31.200 gms from Paramjit Singh @ Pamma	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Special Judge-III, Ferozepur – 27.01.2014
21.	CRA-S-4894-SB-2015	Akash Kumar	3500 mls containing Codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Sangrur – 16.10.2015
22.	CRA-S-2574-SB-2017	Satnam Singh	20 vials of Rexcof containing Dextropropoxyphene	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Faridkot – 06.07.2017
23.	CRA-S-2280-SB-2017	Amritpal Singh	700 tablets containing Diphenoxylate Hydrochloride	U/s 22(c) of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Patiala – 04.05.2017
24.	CRA-S-1616-SB-2017	Amit Kumar Mehta	2000 tablets containing Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Judge, Special Court, Patiala – 01.03.2017
25.	CRA-S-185-SB-2017	Gurjant Singh @ Janta	60 gms intoxicating powder containing Diphenoxylate	U/s 22 of NDPS Act – 10 years RI & L 1.00 lac fine.	Addl. Sessions Judge, Tarn Taran – 20.10.2016
26.	CRMM-23054-2017	Gurpreet Singh @ Tuli	100 tablets marka Alprazolam in 5 strips, 12 injections Buprenorphine 2 ml, 2 bottles of injections Avil 10 ml & 116 gms intoxicant powder.	U/s 22/61/85 of NDPS Act	Judge, Spl.Court, Jalandhar

3. After going through the arguments of the various counsels representing different appellants and perusal of the records, first and the foremost question that needs to be addressed is the overlapping of these commodities alleged to have been recovered from each of the convicts, whether they fall under the definition of 'Narcotic', 'Psychotropic' or 'Manufactured Drug', and if so, under what provisions of law they need to be dealt with. The NDPS Act nowhere defines the term 'Drug' and Section 2 Clause (xx) of this Act defines 'preparation' as follows:

"2.(xx) 'preparation', in relation to a narcotic drug or psychotropic substance, means anyone or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances."

4. Nor there is any definition, comprehensive in nature, assigned to the term 'Narcotic drug' but this term finds mentioned in Section 2 Clause (xiv), which is as follows:

"2.(xiv) 'narcotic drug' means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods."

5. The term 'Psychotropic Substance' as defined in Section 2 Clause (xxiii) is reproduced as below:

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

But in the entire NDPS Act, no comprehensive definition of 'Drug' has come about.

6. Under the Drugs and Cosmetics Act, 1940 (as amended till date) (for short, 'Drugs Act'), the term 'Drug' has been defined in Section 3 Clause (b), which is reproduced as below:

"3. Definitions.- xxxx xxxx xxxx

(b) 'drug' includes -

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

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

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

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

7. Precisely speaking, a drug connotes a medicine, be it internal or external, meant for human or animal use for the diagnosis, treatment, mitigating or preventing any disease or disorder and under the same very Act, 'manufacture' in relation to any drug is listed in Section 3 Clause (f), which carries within its ambit any process or part of a process for making, altering, ornamenting, finishing, packing, labeling etc. treating or adopting any drug or cosmetic with a view to its sale or distribution but does not include compounding, dispensing or packing or any drug or cosmetic. Thus, from a plain reading of the Drugs Act, the term 'drug' comprehensively includes not only medicines but also substances intended to be used for the treatment of diseases of human beings/animals and thus, has within its scope the very main object and purpose of treatment.

8. The very main object of the Drugs Act was primarily to prevent sale and usage of sub-standard/adulterated drug presumably for maintaining high standards of medical treatment to these living beings and thus, the Act was enacted with a view to regulate import, manufacture, distribution and sale of drugs and cosmetics and which is well enumerated in the very statement of objects and reasons at the very opening of the Drugs Act.

9. section 20 of the General Clauses Act, 1897 ensures that the expressions used in any Bye-law are to have the same meaning as they have in the Act, unless there is anything repugnant in the context and if there is any such repugnancy the definition in the Act cannot be resorted to for interpreting a Bye-law. Section 24 of this Act has been carved out for the continuation of orders etc. issued under the enactments repealed and re-enacted. Since the Dangerous Drugs Act, 1930 was enacted by the erstwhile British rulers under the then Government of India Act and thus, by virtue of section 24 of the General Clauses Act, 1897, is deemed to still hold good as the same at no point of time ever stood repealed. Though as has been laid down in '**Janta Singh v. State of Punjab' 1996(1) RCR (Criminal) 1**, a full Bench of this Court has laid down the proposition that Statutes imposing penalty and punishment are to be strictly construed, but at the same time the interpretation cannot be extended beyond its fair construction and thus, to prevent or stultify the manifest purpose of the legislature. The very intention of the legislature must be given effect to as expressed in the language of the provisions, however where the language of a statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can of course adopt a construction which will carry out obvious intention of the legislature.

10. The Drugs and Cosmetics Act, 1940 and the Rules (as amended upto date) were legislated with the object as already canvassed above, and are also supposed to regulate manufacture of drugs to maintain standard of quality besides administration of sale and distribution as a drug through licensing and comprises the very governance and administration of the trade in such drugs and thus, elaborating the definition of drugs of such medicines which are manufactured by a firm/company holding license to do so and the term 'manufactured drug' carries within its ambit, as defined under Section 2 Clause (xi) of the NDPS Act, as follows:

"2(xi) 'manufactured drug' means

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug;

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;"

11. And the term 'manufacture' connotes the very preparation of such a product which falls within the terminology of manufactured drug and the same is defined under Section 2 Clause (x) of the NDPS Act as follows:

"(x) 'manufacture', in relation to narcotic drugs or psychotropic substances, includes

(1) all processes other than production by which such drugs or substances may be obtained;

(2) refining of such drugs or substances;

(3) transformation of such drugs or substances; and

(4) making of preparation (otherwise than in a pharmacy on prescription) with or containing such drugs or substances;"

12. The very object of legislating NDPS Act was to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, which incidentally the drugs are being adulterated and governed by the provisions of Drugs Act. Section 8 of the NDPS Act emphasizes as follow:

"8. Prohibition of certain operations. -No person shall
(a) cultivate any coca plant or gather any portion of coca plant; or
(b) cultivate the opium poppy or any cannabis plant; or
(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter- State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization:
Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:
[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]"

13. An exception has been carved out that this prohibition so envisaged is except for medical or scientific purposes. Thus, a million dollar question arises that if a person needs a medicinal drug for treatment of his ailment, is there any bar on his being in possession of such a commodity?

14. Though a Division Bench of our own Court in '***Inderjeet Singh @ Laddi and others v. State of Punjab' 2014(3) RCR (Criminal) 953*** has sought to bring forth the interpretation holding that whenever a person is apprehended with such manufactured drug and there is violation of the provisions of the NDPS Act and Rules then the offence comes within the ambit of this very Act and Rules and mere recovery of bulk quantity from the possession of an unauthorized person or a person not holding a valid license would lead to consequences that he has committed offence under the NDPS Act, would be too far fetched a proposition of law, though that may tantamount to violation of Drugs Act or Rules framed thereunder and though, the Punjab State, as has been canvassed by the learned State counsel, has enacted The Punjab Narcotic Drugs and Psychotropic Substances Rules, 2012 (in short, 'Punjab NDPS Rules') but will such a provision of a State Act and Rules overrule the Central legislation of NDPS Act as well as the Drugs Act, is a question which needs to be satisfactorily answered. Rules 17, 18, 19 and 23 of the Punjab NDPS Rules prohibit any person to possess any manufactured drug unless the person is lawfully authorized to possess it when it is otherwise not so except entailing violation of the Drugs Act and on the other hand, Rule 24 of the Punjab NDPS Rules allows possession of drugs by medical practitioners or medical institutions and Rule 26 of these Rules provides possession for personal use on the prescription of a medical practitioner which has been sold to him by a licensed chemist for medicinal purposes for which no quantity has been prescribed and the extent to which a person can carry, and in the light of the same "this ratio requires to be revisited by a larger Bench" to sort out the questions as the possession of a bulk quantity

would vary from case to case and person to person and is more of a vague and ambiguous consideration holding further that the quantity of manufactured drug per capsule or in a tablet form cannot be considered as a determining factor, when on the other hand definition assigned to preparation in Section 2 Clause (xx) of the NDPS Act is already reproduced above. The very power to control and regulate the controlled substance vests with the Central Government by virtue of Section 9A of the NDPS Act. At the same time Section 10 of the NDPS Act empowers the State Government to permit, control and regulate such substances though it prohibits external dealings from outside the Court in the light of Section 12 of the NDPS Act. Thus, from it all, it emancipates in no uncertain words that preparation in relation to a narcotic drug or psychotropic substance is understood ordinarily any one or more such drugs or substances in dosage form or any solution or mixture in whatever physical state containing one or more such drugs or substances.

15. Now going back to the NDPS Act, Section 21 provides punishment for contravention in relation to manufactured drugs and preparation and which is reproduced as below to lay emphasis:

"21. Punishment for contravention in relation to manufactured drugs and preparations.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,
(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;
(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees;
(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:
Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

16. Thus, clearly a preparation in relation to narcotic drug or psychotropic substance which does not contain one or more drugs than the prescribed percentage for which the manufacturer has manufactured the same, to the mind of this Court, penal consequence of Section 21 of the NDPS Act do not stand attracted and rather it would, if any, be under the Drugs Act.

17. Section 22 of the NDPS Act deals with punishment for contravention in relation to psychotropic substances and which psychotropic substances as per the dictionary meaning assigned thereto means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substance specified in the Schedule of NDPS Act, and certainly is likely to have affect on the brain whereas narcotic drugs affect and create drowsiness, sleepiness, stupefaction and insensibility. The Schedule contained in Section 2 Clause (xxiii) deals with international non-proprietary names, other non-proprietary names and chemical name.

18. Narcotic Drugs and Psychotropic Substances Rules, 1985 (in short, 'NDPS Rules') by way of Rule 64 define 'manufacture of psychotropic substances', as follows:

"65. Manufacture of psychotropic substances:- (1) No person shall manufacture any of the psychotropic substances except in accordance with the conditions of a licence granted under the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 1945 rules) framed under the Drugs and Cosmetics Act, 1940 (23 of 1940), by an authority in-charge of Drugs Control in a State appointed by the State Government in this behalf:

Provided that a licence to manufacture a psychotropic substance specified in Schedule I shall be issued only for the purposes mentioned in Chapter VIIA:

Provided further that the authority in charge of the drug control in a State shall consult the Narcotics Commissioner before issuing a licence to manufacture a psychotropic substance specified in Schedule I.

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

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

19. By virtue of Rule 65-A the NDPS Rules provides that no person shall sell, purchase, consume or use any psychotropic substance except in accordance with the Drugs and Cosmetics Rules, 1945, and a proviso has been added that such sale, purchase, consumption or use of a psychotropic substance specified in Schedule 1 shall be only for the purposes mentioned in Chapter VIIA of the NDPS Rules which deals with special provisions regarding manufacture, possession, transport, import-export, purchase and consumption of narcotic drugs and psychotropic substances (for medical, scientific and training purposes).

20. Now it needs to be gone into and seen if a loose form of such psychotropic substances is by way of manufactured drugs by a licensed person. Certainly a doubt creates over the applicability of the provisions of NDPS Act and Rules and if it is in a loose form, be it solid or liquid then certainly would be in utter violation of the NDPS Act and Rules. When the Central Government in its notification bearing No.SO-826(E) dated 14.11.1985 had enumerated certain narcotic substances and manufactured drugs and in certain cases for example at Sr.No.87 which deals with dimethylamino, it has been spelled out as under:

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

21. So by that analogy, it means that it is only in cases where the quantity increases or is on a higher level than the alleged percentage, offence under Section 21 or 22 of the NDPS Act comes into play. Though at times, it has been noticed that the trial Courts usually frame wrong charges and conviction takes place under a different provision however, it actually tantamounts to mistrial and is a question depending on individual case to case and there can be no generalization and it is only when the accused to the satisfaction of the Court brings forth his handicap and prejudice, the Court is within its powers to hold it so to bring about failure of justice. Reliance placed on '**Durgo Bai & another v. State of Punjab' 2004(3) RCR (Criminal) 809** and '**Main Pal v. State of Haryana' 2010 AIR (SC) 3292**.

22. Similarly the Hon'ble Supreme Court in '**Hira Singh and another v. Union of India and another' (2017) 8 SCC 162**, considering the ambit of Section 21 of the NDPS Act while elaborating the ratio laid down in '**E.Micheal Raj v. Narcotic Control Bureau' (2008) 2 SCC (Cri) 558**, has considered various ratios of the Hon'ble Supreme Court from time to time and has concluded that the term 'pure content' has been evolved by the Court and it does not make any distinction between 'pure drug content' and preparation or mixture, and therefore by considering the significance of issues raised has referred to a larger Bench of at least 3 Judges to ponder over this question. Till then, not much can be said and with judicial discipline in mind, it would be highly inappropriate to harp on such a proposition which is quite intricate and getting controversial and mercurier with different view points coming forth in different ratios.

23. In the light of what has been detailed and discussed above, this Court is of the opinion purely for the decision of the present applications/petitions for suspension of sentence that manufactured drugs, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried if violation is there under the Drugs and Cosmetics Act and not under the NDPS Act, except those in loose form by way of powder, liquid etc. In view of these observations, the present applications for suspension of sentence in each of these appeals are allowed and the sentence awarded to each of the applicants is suspended during the pendency of his/her appeal and he/she is ordered to be released on bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate concerned.

CRM-M No.23054 of 2017 Gurpreet Singh @ Tuli v. State of Punjab

24. In the light of conclusions drawn by this Court in the foregoing paragraphs of this judgment together with the fact that petitioner Gurpreet Singh alias Tuli is under incarceration since 15.04.2017 and a debatable issue having arisen over the contraband articles alleged to have been recovered from the possession of the petitioner.

25. Though strong opposition has been made by learned State counsel Mr. B.S. Sewak, Addl. Advocate General, Punjab to the contentions of learned counsel for the petitioner. However, it would be in due course of trial, the culpability of the petitioner, if any, would be determined and therefore, in the interests of justice and keeping in view that the trial is not likely to be concluded in the near future, this Court is of the opinion that further detention of the petitioner in the present case is unwarranted. Accordingly, he is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Jalandhar. The petition stands disposed off accordingly.