



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2023

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

AMBIT OF SECTION 50 OF NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

ABSTRACT:

Drugs and narcotic substances are a problem, we, have been fighting against since long. Keeping this in mind, the Narcotics Drugs and Psychotropic Substances, 1985 came into being—aiming at establishing a stringent framework to curb the menace. It is a meticulously drafted legislation, also adhering to the international standards.

Still, there are areas of ambiguity within the same. Section 50 is one such provision which is surrounded by a lot of confusion. It deals with the personal search of a person under the Act. The ambit of such personal search, i.e., what is included and what does it not, is a question not cleared up even years after the legislation.

This article focuses on the ambit of Section 50 and deals with different approaches followed by the judiciary in numerous judgements over the years.

Keywords: Narcotic Substances, Drug Trafficking, Personal Search, Gazette Officer.

INTRODUCTION

The concept of drugs is not alien to India. If referred to the Vedic times, it is seen that there is a very clear mention of two major drinks i.e., Soma and Sura. It is also seen that there is a very close relation between drugs and religion. In our ancient Indian texts, there has been a mention of a ‘state of ecstasy’ which facilitated a

person's connection to God. So, Indian culture is not averse or unaware about the concept of drugs or alcoholic beverages.

Keeping that in mind, it cannot be said that the current state of India, as far as drug trafficking or substance abuse is concerned, is a recent development. But the way this problem has clutched the population today, especially the youth, is concerning.

The genesis of drug trafficking in India can also be attributed to the geographical location of the country. There is a massive inflow of heroin from the Indo-Pak border originating from the 'Golden Crescent' including Iran, Afghanistan and Pakistan-one of the major illicit drug trafficking locations in the world. On the North-Eastern side exists the 'Golden Triangle' which comprises of Burma, Laos and Thailand which is one of the largest opium sources in the world. Apart from these, Nepal also is a traditional source of cannabis.

HISTORICAL DEVELOPMENT OF DRUG TRAFFICKING LAWS IN INDIA:

Prior to 1985, there were a number of State and Central enactments dealing with the same. Some of the principal Central Acts were-

1. The Opium Act, 1857,
2. The Opium Act, 1878 and
3. The Dangerous Drugs Act, 1930

The Opium Acts of 1857 and 1878 were used by the colonial government to promote the cultivation of opium. The aim was to achieve a commercial viability. This was then opposed with the advent of nationalism in the 20th century. In 1930, the Dangerous Drugs Act was enacted to strengthen the control over drugs derived from coca, cannabis and poppy plants with regards to their cultivation, possession,

manufacture, sale and trade. The framework of this 1930 Act still is found in the NDPS legislation.

In the post-independence period, narcotics remained a regulated commodity as a dangerous substance. The constitution makers envisioned the same in **Article 47** of the Constitution which provides that, “*The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health*”.

Internationally, India has ratified the UN Single Convention on Narcotics Drugs, 1961; the UN Convention on Psychotropic Substances, 1971 and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. The NDPS Act was actually passed by Indian Government under the Conventions. In line with these measures outlined in various international agreements, India enacted the **Narcotics Drugs and Psychotropic Substances Act** on September 16, 1985 (commonly known as the NDPS Act). It came into force on November 14, 1985.

The problem was that it was passed without much debate and as a result it was amended in 1989, 2001 and more recently in 2014 and 2021.

AIM AND OBJECTIVE OF THE ACT

The Preamble of the Act states,

“An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances [to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to

implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances] and for matters connected therewith.”

The Hon’ble Supreme Court in *State of Rajasthan v. Udai Lal*¹ provided that NDPS is a special Act enacted with the aim of providing stringent provisions for regulating drug trafficking.

SEARCH OF PERSONS UNDER THE ACT

A person who allegedly commits any offence under the Act has to undergo incarceration till the end of the trial and chances of getting out on a bail are meager. Section 37 of the Act provides that NDPS cases are cognizable and non-bailable. Arrest of a person who has been falsely implicated or wrongly accused is therefore, a serious curtailment of the rights of the accused. Section 50 of the Act therefore, provides a safeguard to the suspect person by allowing to ask for a ‘personal search’ in presence of a magistrate or a Gazetted officer.

Conditions for the search to be conducted (Section 50)

1. When any officer duly authorized under Section 42 is about to search a person under Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without any delay to the nearest Gazetted Officer of any departments mentioned in Section 42 or to the nearest Magistrate.
2. If such a situation arises, the officer may detain the person until he can be produced before the Gazetted Officer.
3. If such Gazetted Officer sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

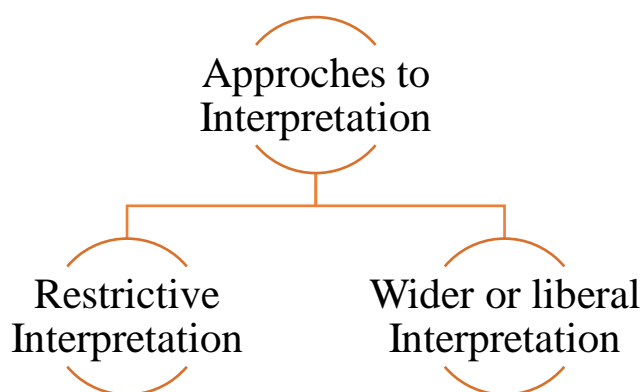
¹ [2008] 11 SCC 408

4. A female shall only be searched by a female officer.
5. When an officer duly authorized under Section 42 has no reason to believe that the person can be produced before the Magistrate or the Gazetted Officer without the opportunity of parting with the narcotics or psychotropic substances, he may proceed the search as per Section 100 of CrPC. Once the search is conducted, the reasons for such belief shall be recorded in writing by the officer and within seventy-two hours a copy has to be sent to the immediate official superior.

Section 50, therefore works to provide safeguard to the suspect by allowing for a ‘personal search’ in the presence of a Magistrate or a Gazetted Officer.

The constitutional bench of the Apex Court in *Vijaysinh Chandubha Jadeja v. State of Gujarat*² reiterated that the purpose of the section was to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting or foisting of false cases by the law enforcement agencies.

However, the scope of the term ‘*personal search*’ has been liberally and literally interpreted by Supreme Court. This can be explained in two different approaches as follows:



² [2011] 1 SCC 609

Restrictive approach for interpretation of Section 50

Under this approach, which is also commonly followed approach in such cases, personal search is said to include only the search of a person and doesn't include the belongings like bag, vehicle of the accused and for their search, there is no requirement for a Magistrate to be present.

The Constitutional Bench in *State of Punjab v. Baldev Singh*³ dealt with the scope of section 50. It was emphasized in the same that the right of an accused to have 'personal search' conducted in the presence of a Gazetted Officer is 'sacrosanct and infeasible'. However, the Court also has to provide an opportunity to the prosecution to establish at the trial that the provisions of Section 50 were complied with. It is then for the Court to determine the same on the basis of evidence.

Further, in *Gurbax Singh v. State of Haryana*⁴, referring to the Baldev Singh case, it was observed that the right under Section 50 is an extension of right conferred under Section 100 (3) of the Criminal Procedure Code. So accordingly, Section 50 of the NDPS Act would be applicable only in those cases where the search of the person is carried out.

Relying upon the decisions in the above-mentioned cases, the Apex Court in *Madan Lal v. State of Himachal Pradesh*⁵ provided that the scope of Section 50 if literally read would only to personal search and doesn't extend to "to search of a vehicle or a container or a bag or premises". The Court held that the language of Section 50 in

³ [1999] 6 SCC 172

⁴ [2001] 3 SCC 28

⁵ [2003] 7 SCC 465

unambiguous terms implicitly lies down “that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles.”

In *State of Himachal Pradesh v. Pawan Kumar*⁶, the Court more clearly stated that “a bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be a part of the body of a human being. It was observed that a person of varying capacity can carry different items on his or her body but that doesn’t make those items as a part of the body. Therefore, it was concluded that an external article which doesn’t form a part of body is outside the ambit of the word ‘person’ occurring in Section 50 of the Act.

Similarly, the Apex Court in *Ajmer Singh v. State of Haryana*⁷ ruled that the accused is not covered by the protection of Section 50 as the opium was covered by the protection of Section 50 as the opium was recovered from a bag carried out by the accused and therefore, the contention of the counsel that ‘provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act’ was negated.

Wider Interpretation of term ‘personal search’ in Judicial decisions

Wider connotation of the term includes within its ambit the items like bags, vehicle, etc. The decisions which have been discussed above have described the commonly followed opinion on the interpretation of Section 50.

⁶ [2005] 4 SCC 350

⁷ [2010] 3 SCC 746

However, there are quite a few judgements wherein the apex courts have taken a different stand and have held that the term ‘personal search’ would also include the items carried by the suspect.

In *Dilip and Another. v. State of Madhya Pradesh*⁸, the Apex Court didn’t directly rule that search of an item would also mean personal search but, it came other way saying that whenever both person and the item carried out by the person is searched then the presence of Magistrate or Gazetted officer is mandatory. In this case, therefore, the body was searched first and then scooter was also searched.

In *Union of India v. Shah Alam*⁹, it was the other way around. First, the bag was searched from which heroin was recovered and then the body was searched but nothing was recovered from the body. In this case, it was contended that since the personal search did not lead to any recovery, there was no need to comply with the provisions of Section 50 of the NDPS Act. However, the Court rejected the contention of the State and followed Dilip’s case and held that “since the provisions of Section 50 of the NDPS Act were not complied with, the High Court was right in acquitting the respondents on that ground”.

Another judgement of the Apex Court in *State of Rajasthan v Parmanand and Another*¹⁰, projects the broader interpretation of Section 50 of the Act in following words, “if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application.

⁸ [2007] 1 SCC 450

⁹ [2009] 16 SCC 644

¹⁰ [2014] 5 SCC 345

Thus, there is a lack of judicial consensus on the adoption of an interpretative approach to construe Section 50 of the Act. These ratios do not seem to be in prima facie contravention with the judicial line of thinking in *Baldev Singh* case and other similarly decided cases as the issue in this case has been portrayed in a somewhat different manner and seems to be a case of first instance. But looking holistically this ratio has the capability to dent the ratios of decision followed in *Baldev Singh* line of thinking. Thus, wherever there is a mixed question of search of a being as well as item then the compliance of Section 50 is mandatory and only in those cases where solely item is searched then the operation of Section 50 can be avoided.

Critical Analysis of Judicial Decisions

Requirements under Section 50 is not merely an empty formality but, is mandatory and strict compliance of it is required and failure to comply with the provision would render the recovery of an illicit article and vitiate the conviction if one was made.

Moreover, there are quite a few cases where police have conducted search of bags, vehicle etc. in the presence of a gazette officer. In case of *Mahiman Singh v. State of Uttrakhand*¹¹, police upon information that the accused is carrying commercial quantity of charas in his jeep intercepted the vehicle for the purpose of search. The accused upon suspicion was asked if he wants to be searched in presence of a Gazetted officer. The accused was then searched in presence of a Naib Tahsildar and the recovery was made. Now under this case, though as per *Baldev Singh* case³³ there was no obligation on the part of the police officer to carry out search in presence of a Gazetted officer, the opportunity was afforded to the suspect. Similarly, conditions under section 50 were compiled in the case of *State of Rajasthan v. Jag Raj Singh*¹² even though the contraband material was present in a

¹¹ [2016] CRI.L.J. 4407

¹² [2016] 11 SCC 687

bag in jeep. So, these are the illustration of the cases where police themselves has extended the benefit of the beneficiary provision to the accused. But this doesn't solve the problem as the liberty of still many is still at stakes till the ambiguity in the provision is ironed out.

But grey area emerges from the fact of interpretation of the term 'personal search' in Section 50 of the Act. Further, what emerges from the above discussion is that the applicability of Section 50 cannot be completely ruled out when accused is travelling in a vehicle and the police officer searches both the suspect person and suspected vehicle accompanying him. It is argued that the apprehension of false implication that is intended to guard a person under Section 50 by placing restriction on Police while they conduct the search of a person of accused, as highlighted in Baldev Singh case, must also apply mutatis mutandis apply when vehicle of accused is searched by Police.

For instance, where person is suspect of carrying commercial quantity, it is obvious that such commercial quantity cannot be filled up in pockets. So, he would carry it in some bag, vehicle, etc. to hide the same.

Therefore, having a narrow interpretation of the term 'personal search' and in turn of Section 50 would restrict the scope only to the search of a person of accused will not satisfy the object, as the apprehension of person will remail to continue that he may still be implicated by police or any other person, for more stringent punishment of carrying commercial quantity, by getting rid of rigor of mandatory provision of Section 50 by placing the contraband subject in a vehicle, bag, etc. accompanying the person.

In the case of **S.K Raju v. State of West Bengal**¹³, the Sessions Court convicted the accused, the said conviction was upheld by the High Court against the said judgment appeal was filed before the Supreme Court which was admitted and heard by a three judges' bench. In the said case the search of the accused was conducted in presence of gazette officer. On search charas was recovered from black polythene packet which was inside the jute bag which was being carried by the accused person. The bench pondered upon the judgments rendered in Parmanand (Supra) and Dilip (Supra) and held that since search conducted was not only of the bag which the accused was carrying but also involved search of the person of the accused section 50 would be attracted and would be applicable. In facts of the case as both search of the person and bag was conducted in presence of gazette officer, bench held that compliance had been made with the provisions of section 50 and dismissed the appeal.

The provisions of Section 50 should be purposively interpreted in light of the avowed object behind the provision. The apex court in the case of **Beckodan Abdul Rahimany v. State of Kerela**¹⁴, clearly spelled the purpose behind the Section 50 of the Act. It observed that "the safeguards mentioned in Section 50 are intended to serve a dual purpose to protect the person against false accusation and frivolous charges as also to lend credibility to the search and seizure conducted by the empowered officer." Law does not operate in vacuum. It has to be understood in context of the historical, political, economic and ethical forces. Therefore, in light of this, Section 50 should be interpreted liberally because it is focuses on the accused's rights but at the same time it is not only about that.

¹³ [2018] 9 SCC 708

¹⁴ [2002] 4 SCC 229

CONCLUSION

Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 provides the conditions under which search of person shall be conducted. The section provides that if a search of a person has to be made under the act, then such person has to be searched in presence of a Gazetted Officer or before a Magistrate if such person has to be searched in presence of a Gazetted Officer or before a Magistrate if such person desires so.

In other words, it also becomes the duty of the officer to inform the person who is going to be searched about his right to be searched before a Gazetted officer or magistrate and if the person seeks to use his right, then he needs to be taken to the nearest magistrate or Gazetted officer or magistrate and if he needs to be taken to the nearest magistrate or Gazetted officer as per the requisition made by him.

The rationale behind this is that such kind of search would provide much more authenticity and credit worthiness. Due to this, it becomes important to understand what is included in personal search and what would be outside of its ambit.

Referring to the case of *Baldev Singh*¹⁵, it is very clear that Section 50 is a sacrosanct and indefeasible provision. However, the ambit of the provision is not unambiguously clear as to whether the articles carried by the accused person would attract the provisions of the Section 50 or not. A three-judge bench in *Pawan Kumar*¹⁶ has held that articles carried by the person would not form part of search as provided in section 50, but a three-judge bench in *S.K Raju*¹⁷ has held that where both an article carried by accused and his person is searched provisions of section

¹⁵ *Supra* Note 3

¹⁶ *Supra* Note 6

¹⁷ *Supra* Note 13

50 would be applicable, from wherein it can be understood that the articles form a part of the 'person' of the suspect.

Hence there is a need to bring clarity on the ambit of what would be included in the search as per section 50. There is a need to examine the ambit of the same by a larger Bench to provide a clear viewpoint since there are two opinions on this matter as of now.

REFERENCES

The Narcotics Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985)

'The Narcotic Drugs and Psychotropic Substances Act'
<<https://rajasthanjudicialacademy.nic.in/docs/studyMaterial17122020.pdf>>
accessed on 15th August, 2023

'The Drug Scenario: Global, Regional and National'
<<https://egyankosh.ac.in/bitstream/123456789/17364/1/Unit-4.pdf>> accessed on
15th August, 2023

Kumar M, 'Section 50- NDPS Act' (*Taxguru*, 21st September, 2020)
<<https://taxguru.in/corporate-law/section-50-ndps-act-applies-cases-personal-search.html>> accessed on 15th August, 2023

Kapoor I, 'Ambit of Section 50 NDPS Act' (*India Legal*, 21st June, 2021)
<<https://www.indialegallive.com/top-news-of-the-day/news/ambit-of-section-50-critique-whether-there-is-a-need-to-re-determine-the-ambit/>> accessed on 15th
August, 2023

Mohammed A, 'Search and Seizure under NDPS Act: An Overview' (*Lawomatic*, 21st July, 2022)

<<https://www.lawomatic.in/view.php?id=44>> accessed on 15th August, 2023

Balyan C and Sharma A, 'Personal Search under NDPS Act- Revolving Judicial Dilemma in Interpreting Section 50' (July-Sept, 2017) Bharti Law Review

<<https://gyansanchay.csjmu.ac.in/wp-content/uploads/2022/08/SSRN-id3670117.pdf>> accessed on 15th August, 2023