

**STANDARD OPERATING PROCEDURE TO DEAL WITH THE CASES
REGISTERED UNDER NDPS ACT, 1985**

Introduction: -

Narcotic Drugs and Psychotropic Substances Act, of 1985 (NDPS Act) was passed on 14 November 1985 to prohibit the manufacturing, cultivation, possession, sale, purchase, transport, storage or consumption of drugs without permission from appropriate authorities.

However, due to lack of adequate knowledge, non-following the mandatory provisions of the NDPS Act, procedural lacunae in the investigation, the conviction percentage remains very low. Therefore, it is imperative to formulate an SOP to ensure proper and thorough investigation in cases registered under the NDPS Act.

Objective of the SOP

The objective of this SOP is:

- i. To sensitize the IOs with respect to the key features of the Act along with the prominent judgments of Apex Court/High Court.
- ii. To provide the guidelines highlighting the procedural requirements to be followed by the IOs during search, seizure, arrest of accused and investigation.
- iii. To provide a procedure for sampling and disposal of seized drugs.
- iv. To provide a mechanism for seizure and confiscation of narcotic drugs and psychotropic substances, and the forfeiture of the properties derived from, or used in, illicit drug trafficking.
- v. To sensitize the IOs with respect to the shortcomings noticed by the Learned Trial Courts while acquitting the accused in NDPS Act cases.
- vi. To provide step to step guidelines for the IOs from inception of the case till the conclusion of trial.

PENAL PROVISIONS:-

The Narcotic Drugs and Psychotropic Substances Act, 1985 views drug offences very seriously and prescribes stringent penalties. The Act follows a graded system of punishment varying with the recovered quantities (small, commercial and intermediate quantity) as defined in the act of narcotic drugs and psychotropic substances. The punishment prescribed for different quantities is as follows:

Small quantity : Rigorous imprisonment for a term which may extend to “one year”, or with fine which may extend to Rs.10,000 or with both.

Intermediate quantity : Rigorous imprisonment for a term which may extend to ten years and with fine which may extend to Rs. 1,00,000.

Commercial quantity : 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 Rs. 1,00,000 but which may extend to Rs. 2,00,000s.

Provided that the court may for reasons to be recorded in the judgement impose a fine exceeding 2 lakh rupees.

MANDATORY COMPLIANCES:

SECTION 41 (Issue of warrant/authorization by a Magistrate or a G.O.)

Section 41 of the Act empowers a Magistrate or a Gazetted Officer to issue a warrant/authorization for a search and seizure. **Such authorization has to be based on information taken down in writing.** If G.O. himself has to carry out search or to conduct raid under section 41, it is not necessary for him to get any authorization from other G.O.

SECTION 42 (Search, Seizure & Arrest at private place without authorization/warrant)

This section relates to entry into and search of any building, conveyance or enclosed place without a warrant/an authorization.

- a) During day time any empowered officer is authorized to conduct search, seizure and arrest.
- b) During night time any empowered officer is authorized to conduct search, seizure and arrest only after recording his satisfaction for non-compliance of section 41.
- c) Any SI can search any licensed manufacturing unit.

However this section should not be invoked and a warrant/authorization as per section 41 of NDPS Act should mandatorily be obtained.

SECTION 50

Section 50 of the NDPS Act provides the provisions of personal search of a person suspected to be carrying NDPS drugs on him. The section mandates -

- i. Any person who is intended to be searched has a right to be searched before a gazette officer or a magistrate.
- ii. It is the responsibility of the empowered officer to apprise the person in writing of his right to be searched before the nearest Gazetted Officer or a Magistrate. The denial should also be recorded. The right does not apply to search of bags being carried by the person; it applies only to search of his person as expounded by the Apex court/High courts in several judgements.

SECTION 51 (Procedure of Search, Seizure and Arrest)

- a) Search – Search to be in front of two independent witnesses, search of self and search party before accused and independent witnesses.
- b) Seizure – Empowered Officer should ascertain the genuineness and the quantity of the recovered contraband and proceed to draw a Seizure Memo. **As per Notification 899 E dated 23.12.2022 Seizure, Storage, Sampling and Disposal Rule 2022** siezed items to be brought to the nearest Magistrate.

- c) Arrest – as defined under section 52 and draw an arrest memo as per u/s 49 of BNSS previously u/s 46 of Cr.PC.

SECTION 52(Grounds of Arrest)

This section casts a duty on the arresting officer to inform the accused person about the grounds of his arrest and to forward the accused along with the seized NDPS article to the Magistrate or to the nearest SHO as the case may be.

SECTION 52A (Disposal of Seized Articles)

This section mandates about the disposal of seized contrabands by forwarding it to the nearest Magistrate as per DOR Notification.

SECTION 57(Report to immediate Superior officer)

All Arrests and Seizures to be informed within 48 hours to immediate Superior Officer.

Guidelines for IOs while conducting investigation of NDPS Act cases with common grounds for acquittal:

Stepwise guidelines to be followed by the IOs while investigating the cases of NDPS Act with common grounds of acquittal in these cases are annexed at **Annexure-A**.

Annexure-A**IMPORTANT GUIDELINES****Pre-registration Stage:****1. Recording of Information:**

Whenever any information is received regarding availability of a narcotic drug at a particular place or with a particular person, this information should be taken down in writing and forwarded to the SHO/ACP Sub-Division for obtaining necessary orders.

2. Verification of Information:

A preliminary verification of the information through sources and by surveillance, whenever situation demands, should be done.

3. Planning of Operation:

The operation should be well planned so that it can be conducted efficiently in the least possible time. Choosing the right time to strike is crucial specially when both the buyer and seller of the drug are together and are conducting the transaction. Deployment of responsibilities on various participating officers should be done after briefing on the objectives of the operation. Officers deployed for the search should carry their official identity cards.

4. Carrying important papers/articles/Drugs Identification Kit : The IO should carry the following important articles/paper while making departure for conducting raid:

- i. Search proforma,
- ii. Form of notice under Sec. 67 of the NDPS Act,
- iii. arrest memo,
- iv. envelopes,
- v. seal,
- vi. sealing materials,
- vii. writing paper,
- viii. candles,

- ix. matchsticks,
- x. digital weighing machine
- xi. Drug Identification/Test Kit
- xii. Other items which may be necessary during the raid

5. Lodging of proper departure Entry:

The IO should make proper and detailed departure DD entry mentioning the details of raiding team members, vehicle through which the raiding team is proceeding to the spot, details of all equipment's being taken to the spot etc.

6. Search of Premises:

Before the commencement of the search, the officer should obtain an authorization for the search as per Sec. 41(2) of the NDPS Act. On searching the spot, the officers must immediately gear up for the strike. The entry and exit points must be manned properly and watch should be maintained on the windows and other opening so that nothing can be thrown from exit/verandah, etc.

7. Search Authorization:

If a place is to be searched based on personal knowledge or information taken down in writing, a copy of the grounds of belief or information is to be sent forthwith to his immediate official superior.

8. Procedure for search in premises :

As entry into the premises is sought, the officers should disclose their identity and purpose and offer themselves to be searched. It is to be remembered that the purpose of search may be defeated if anybody is allowed to go out of the premises or make outside calls during the search.

9. Personal Search:

If a person is to be subjected to a personal search, clear offer of search must be given to the accused. He must be informed of his legal right to get his search conducted before Gazetted officer or

Magistrate and if such accused so requires then he shall be taken to the nearest Gazetted officer of any of the departments mentioned in section 42 or Magistrate without unnecessary delay. When accused to be searched is a lady then the search is to be conducted as per the provisions of section 50(4) of NDPS Act. Section 50(4) says, "No female shall be searched by anyone excepting a female"

Section 50 is not applicable where the recovery is effected from carry bag, tanker or any other vehicle as it is not a case of personal search.

State of Rajasthan v/s Parmanand and another

In this case, the apex court held that each accused must be individually informed that he has a legal right to be searched before a nearest gazetted officer or before a nearest Magistrate- A joint communication of the right available under section 50(1) of the NDPS Act to the accused would frustrate the very purport of section 50.

10. Search in Presence of Independent Witnesses:

Before conducting the search of the suspect, it is necessary for the IO to make every possible effort to join an independent witness, if the accused is apprehended from public place as in such case there is no dearth of independent witnesses at the spot. If any person is not willing to join the investigation then he must clearly mention in the ruqa regarding this fact and he must also mention this fact in the police file as well as in his personal diary.

11. Preparation of Search List (Panchanama) and seizure of case property:

After conclusion of the search, a search list is to be prepared. Drugs or things or documents if recovered and also the place of their recovery are invariably to be mentioned in the search list. A copy of the search list is to be handed over to the agent/owner/occupier of the premises. If any personal search is taken during the search of the premises, a separate search list mentioning the goods recovered

from person so searched. In case of no recovery, NIL RECOVERY is to be mentioned in the search list.

The search list should bear the signatures of the person, owner/owner's representative witnesses along with their name, addresses, etc. The copy should bear the dated signature of whom it has been served.

Case property must be properly sealed with the standard seal by the IO and the seal used must be handed over to any of the witnesses. While taking the case property in his charge, the SHO should counter-seal it with his own seal.

Preparation of complaint/endorsement for registration of FIR:

After recovery of the NDPS drug or psychotropic substance, the IO should prepare a complaint/endorsement for registration of FIR, which must include the following points:

- i. Raiding party's constitution, departure with/without vehicle, arms and ammunition, route taken, the name of the driver as well as accompanying of the informer.
- ii. Numbers of independent public witness requested, their place, their background, i.e. whether they were passer-by, rickshaw pullers, residents, etc., and reasons for not joining.
- iii. Time must be noted for important aspects like:
 - a) Time of making DD entry
 - b) Constitution of raiding party
 - c) Time of leaving police station
 - d) Time of arrival of spot
 - e) Time of briefing to the team
 - f) Time of nakabandi
 - g) Time of apprehending of suspect
- iv. Briefing of staff, position of the informer/staff.
- v. Time and direction of arrival of the suspect, whether he was carrying something with him, his turnout, etc.
- vi. If anybody is accompanying the suspects, he must also be apprehended and interrogated thoroughly.

- vii. If any vehicle is used by the accused, its number, make and colour.
- viii. Mandatory compliance of provision u/s 50 NDPS Act.
- ix. Complete description of packing/wrappers/markings and the contraband.
- x. Checking of contraband through field-testing kit.
- xi. Seizure of NDPS drugs, sealing by the IO and counter sealing by the SHO at the place of recovery.

Steps to be taken during Investigation:

1. Recording of Statements:

The next important step that is required to be taken is interrogation/examination of the suspects (accused) and the witnesses. Notice under Section 67 of the NDPS Act may be issued and statements about the identity of the person, address, background, education, occupation, involvement in the drug trade, etc., are to be recorded. This notice should be served under the signature of the concerned person. It must be ensured that the statement that is recorded is written in the language which is understood by the suspects/witnesses. The officer in whose presence the statement is given should also put his signature. If the statement is not written by the person himself, the officer should keep a note that the statement was read out and explained to the person in the language known to him.

2. Disposal of Persons Arrested and Articles Seized:

While arresting a person memo may be served to the person under his dated signature as a token of receipt of the same. The person being arrested should be informed of grounds for such arrest as per Sec. 52(1) of the NDPS Act. Other provisions of Section 52 have also to be complied with regard to arrested persons and seized article.

3. Withdrawal of Sample:

As per the amended provisions, the procedure of sampling is done by the learned Illaqa/Duty Magistrate under section 52A of NDPS Act. In

other words, the process of withdrawing of samples has to be in the presence and under the supervision of the Magistrate only and the entire exercise has to be certified by him to be correct. Therefore, it is incumbent upon the SHO to forward the samples immediately to the Ld. MM Court for:

- a) For withdrawing representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.
- b) Certifying the correctness of the inventory and
- c) Certifying photographs of such drugs or substances taken before the Magistrate as true.

After withdrawing of the samples, the same should be sent to the laboratory within 72 hrs. Sometimes when the sample is sent to FSL, it is returned by the lab by raising some objection which is fatal for the case of prosecution. MHC must make sure that there should be no infirmity when the sample and the docket are sent to the lab.

4. Informing the Superior about Seizure and Arrest:

As per requirement of the Act, the immediate superior officer is to be sent a full report of all the particulars of an arrest. This requirement of law is not to be forgotten. Such report should be given within 48 hours of seizure or arrest in terms 57 of the NDPS Act.

5. PC Remand of accused:

The accused should be taken on PC remand to unearth the entire chain of suppliers, drug dealers involved in drug trafficking.

6. Financial Investigation:

Drug offences, unlike most other offences, are committed only with profit motive. One of the strategies to fight drug trafficking is denying the traffickers the fruits of their trafficking. Chapter VA of the NDPS Act provides for forfeiture of such illegally acquired properties. The property derived from or used in illicit traffic of drugs is liable to forfeiture (Chapter VA of the NDPS Act). The provisions of this chapter are applicable to:

1. Person convicted for an offence punishable with imprisonment of 10 years or more;
2. Person convicted for similar offences outside India;
3. Persons detained under PITNDPS Act;
4. Persons, who are arrested or against whom a warrant of arrest or an authorization of arrest has been issued for commission of an offence punishable with imprisonment of 10 years or more;
5. Persons who are arrested or against whom a warrant or authorization of arrest has been issued for commission of an offence under any other corresponding law of any other country;
6. Persons detained under PITNDPS Act.
7. Relatives of the persons referred to above;
8. Associates of persons referred to above.

7. Forfeiture of Property:

- i. **Freezing of Property:** The officer investigating the case can seize or freeze such property by issuing a freezing order under section 68 F.
- ii. **Confirmation:** A copy of the freezing order should be sent within 48 hours to the Competent Authority who has to confirm the order within 30 days.
- iii. **Issue of Show Cause Notice:** The Competent Authority issues a Show Cause Notice to the person whose property is frozen calling upon him to show why the same should not be forfeited (Section 68 H).
- iv. **Forfeiture of property:** After considering the reply to SCN, if any, received, the Competent Authority issues an order forfeiting the whole or part of the property (Section 68 I).
- v. **Burden of proof:** Whenever any property is to be forfeited under this Chapter, the burden of proving that the property is not illegally acquired rests on the person whose property is to be forfeited.
- vi. **Fine in lieu of forfeiture:** The Competent Authority can impose a fine in lieu of the forfeiture of property.

- vii. Management of the forfeited property:** The Competent Authority is also the administrator and is responsible to receive and manage all the frozen and forfeited properties.
- viii. Appeals:** Any appeal against the order of a Competent Authority lies with the Appellate Tribunal for Forfeiture of Property.

8. Preparation of Charge-sheet:

After completing the investigation and after collecting the result from FSL, a charge-sheet must be prepared under appropriate sections of law and filed in concerned Court without any delay. Role of each witness must be explained in the list of witnesses and each document must be duly annexed with the charge-sheet.

POST FILING CHARGE-SHEET

After filing the charge-sheet in Court, it is equally important to follow the progress of the case. Therefore, to ensure proper pairvi of cases, there must be a Pairvi Cell which shall perform the following tasks to ensure proper pairvi of cases:

- a. Ensure supplying of charge-sheet to the accused person(s) in compliance of u/s 187 of BNSS previously u/s 207 of Cr.Pc.
- b. Ensure filing of written submissions by APP at the time of framing of charge
- c. Proper co-ordination with Public Prosecutor & IOs to decide the sequence in which the witnesses shall be produced in Court
- d. Sending advance alert message to the IO, complainant, witnesses for Court hearing
- e. Thorough briefing of witnesses before deposition to give accurate and convincing testimony
- f. Ensure timely filing of pending FSL results/statutory sanctions.
- g. Ensure timely production of case property
- h. Ensure timely appearance of all prosecution witnesses
- i. Ensure timely compliance of Court's direction

REASONS OF ACQUITTAL IN NDPS ACT CASES:

- i. **Mismatch of document:** Mismatch between timing of receipt of information, interception, recovery, seizure, search in follow up action, preparation of test memo, recording of statements leads to failure of a case. If these documents are prepared with care ensuring that the times do not mismatch, the conviction rate can go up significantly.
- ii. **Improper affixation of Seal:** Courts attribute a great deal of importance to the affixation of proper seal on the seized exhibits. Defective/broken seals creates doubt on the seizure of exhibits.
- iii. **Non compliance of provisions of Section 50:** Not giving the accused an opportunity to be searched before a Gazetted Officer or Magistrate as per Section 50, or not recording the fact that this opportunity has been given to the suspect, is one of the main reasons for failure of prosecution. Sometimes, the language used in notice under section 50 of NDPS Act is not known to the accused.
- iv. **Loopholes in recovery proceedings:**
 - a) Independent Public witnesses are not joined during recovery
 - b) No videography/photography of recovery proceedings is done
 - c) Recovery of case property from open place creates doubt on recovery proceedings
 - d) Female officers are not joined in search of a house where there are females.
- v. **Procedural lacunae in investigation**
 - a. Seal after use is not handed over to independent witness
 - b. Handed over memo of seal is not prepared
 - c. Sketch of site plan, seizure memo/arrest memo does not bear the sign. of witness/complainant
 - d. Pullanda is not sealed properly
 - e. Reason for mentioning the details of FIR over seizure memo is not given
 - f. Arrival/departure entries of raiding team/IO are not placed on record

- vi. **Failure to examine material witness:**
Sometimes it becomes difficult to examine a material witness as either he is from a foreign country or is no more residing at his old addresses and his current address is not available.
- vii. **Courts are laying more emphasis on technical evidences but IOs lack scientific temper, hence,**
 - a. Proper evidence not collected from the scene of crime
 - b. Lack of proper training in handling/packaging/sealing the exhibits
 - c. Delay in sending exhibits to FSL
 - d. Non collecting of digital evidences as per the mandate of law
- viii. Delay in sending samples for testing.
- ix. Inadequate evidence to link the consignment to the suspect.
- x. **Lack of co-ordination and interaction:** The lack of co-ordination between the IO and the SPP causes communication gap and may result in acquittal. The investigation Officer should brief the SPP properly and ensure that the SPP himself and not one of his junior- attends the case and that he argues the case properly.
- xi. **Lack of proper pairvi strategy-**
Usually the focus of I.Os. remains on case up to the filing of charge sheet. Thereafter, no effective pairvi of cases is made:
 - a. To ensure timely presence of primary/star witnesses
 - b. For proper and advance briefing of witnesses including police witnesses by the IOs before recording of their evidences in Court
 - c. To ensure production of case property/filing of statutory sanction in court
- xii. **Witnesses not being briefed properly:**
If the witnesses are not briefed properly, they may make inaccurate and vague statements resulting in contradiction between statements and failure of Prosecution.

Annexure-B**IMPORTANT JUDGEMENTS IN NDPS Act,1985**

Sr. No.	Case Title	Gist of the Judgment
1.	Vijay Singh Chandubha vs State Of Gujarat (2011) 1 SCC 609	It is mandatory to inform the suspect of existence of his right to be searched before a Gazetted Officer or a Magistrate and in case he so opts, failure to conduct search before such officer or Magistrate would render the recovery of article suspect and vitiate conviction if it is recorded on the base of recovery alone. Information need not be communicated in a prescribed form or in writing.
2.	Thana Singh V/s Central Bureau of Narcotics (2013) 2 SCC 603	Supreme Court has given some directions by way of present order for the speedy trial of the NDPS cases. 1. ADJOURNMENTS: The Court has expressed displeasure at the adjournments granted in the Courts in general and has directed that, <i>grant adjournments at the request of a party except where the circumstances are beyond the control of the party.</i> The Court has made a reference to the S.22 of the P.C. Act wherein the evidence can be recorded in the absence of the accused. 2 EXAMINATION OF WITNESSES: In Para 11, the Hon'ble Court has highlighted the importance of Sessions Trial i.e conducting examination and cross examination of a witness on consecutive days and has directed the concerned Courts to adopt the method of sessions trial and assign block dates for examination of witnesses. 3. WORKLOAD: In Para 14, the Court has stated that each state particularly states of Uttar Pradesh, West Club and Jammu & Kashmir will have a Special Court and that the number of Special Courts will be in proportion to

		volume of cases. It is also stated that until establishment of NDPS Courts, NDPS cases will be prioritized over all other matters. 4. NARCOTIC LABS: In Para 15, Apex Court has pointed out that each state is directed to establish state level and regional level forensic labs. The number of such labs will be dependent upon the backlog of cases in the state. 5. RE-TESTING PROVISIONS: The Apex Court has highlighted the fact that NDPS Act does not permit resampling/re-testing of samples, thus the Court ordered that any requests as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding judge. An application in such rare cases must be made within a period of fifteen days from the receipt of the test report. No applications for re-testing /re- sampling shall be entertained thereafter.
3.	Union of India vs. Mohanlal & Anr (2016) 3 SCC 379	The Hon'ble Supreme Court in the present matter had taken cognizance of the fact that a lot of seized contraband is being kept with the Central and State agencies and that the efforts taken towards the destruction of such contraband are not adequate. The Court has observed that the contraband is finding its way back into the society. After careful scrutiny of the collected data from different agencies and High Courts in regard to seizure, storage, disposal and destruction of the seized contraband, the Court has delivered a judgment on these aspects of NDPS law.
4.	Mukesh Singh vs. State (Narcotic Branch of	The Court after citing all the observations and relevant provisions of NDPS Act as well as that of Cr.P.C. held that there is <i>no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that</i>

	Delhi) SLP (Crl.) No. 39528/2018	<i>the informant has investigated the case.</i> Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightway acquitted unless and until the accused is able to establish and prove the bias and the prejudice.
5.	Kalu Sk. @ Kuran C.R.M. (NDPS) 492 of 2022	Hon'ble High Court of Calcutta has issued following directions; (i) In all cases involving recovery of narcotic substance particularly recovery of narcotic above commercial quantity, seizing officers shall make a video recording of the entire procedure unless for reasons beyond the control of seizing officers, they are unable to do so; (ii) Reasons for failing to videograph the recovery proceeding must be specifically recorded in the investigation records particularly contemporaneous documents including seizure/inventory list; (iii) Superior Police Officer not lower than the rank of Additional Superintendent of Police shall monitor recovery of narcotic substance above commercial quantity within their territorial jurisdiction and ensure due compliance of statutory provisions regarding search and seizure including compliance of the directives (i) and (ii) relating to videography of recovery and/or recording of adequate reasons for departure from such procedure; (iv) Non-compliance of the directives (i) and (ii) relating to videography of recovery and/or failure to record just reasons in contemporaneous documents for its non-compliance would attract departmental proceeding so far as the seizing officer is concerned; (v) Director General of Police shall issue necessary directions for due compliance with the aforesaid directives; (vi) Superintendent of Police/Commissioner of Police

		in each district/commissionerate shall undertake training programmes to spread awareness and capacity building of officers regarding compliance of statutory requirements in the matter of search and seizure of narcotic substance under NDPS Act and compliance of the aforesaid directives relating to videograph of recovery including collection, preservation and production of such electronic evidence in Court.
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