

CRITICAL ANALYSIS OF REASONS FOR HIGER ACQUITTAL RATE IN CASES RELATING TO NDPS

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ABSTRACT:

Main purpose of this research is to understand the object of conducting fast preliminary of the offenses the arrangement for constitution of Exceptional Courts was embedded in the NDPS Act. The initial two courts which were begun working as Unique Courts under this Act were set up at Bombay vide Government notice dated 04/01/1991. From that point at any remaining locale places too the extraordinary courts were laid out in Maharashtra. Out of 36 locale of Maharashtra in close to around 33 Sections unique courts were comprised for preliminary of NDPS cases. Yet at the same time the pendency of NDPS cases is extremely high in Courts in India.

According to NCRB information distributed in Wrongdoing in India from the year 2014 to 2019, Maharashtra remained at top having announced greatest number of NDPS cases, followed by Punjab and Uttar Pradesh.

It intends that following 35 years of order of NDPS Act, there are still lacunas in execution of NDPS Act because of which the real guilty parties for example drug dealers/drug vendors are still far away from courts.

KEYWORDS: NDPS, Drugs ,NCRB, Presumption of Innocence.

INTRODUCTION:

In current years, the issue of medications double-dealing has victory its limbs in pretty much every circle of public life and has had an enormous exhibit of destructive impacts on the social orders where it has been generally widespread.

The justification for why the issue of illicit drug use is seen as a definitely more difficult issue than other social wrongs is on the grounds that it is inseparably interwoven with different offenses, for example, coordinated violations, illegal exploitation and tax evasion as well as wellbeing perils like HIV - Helps. India has a long history of marijuana and opium use in friendly, otherworldly and therapeutic settings. The gravity of the issue can be checked from the measurements delivered by the Public Wrongdoing Records Department (NCRB) which show that medications and opiates worth Rs 19.51 crore and Rs 17.05 crore were seized in 2010 and 2009 separately.

Expecting we consider the NCRB data concerning Court evacuation of NDPS cases in India, near around 68572 cases were incorporated before year pendency of 190920 cases so endlessly out 2,59,492 cases were sent for fundamental during 2019.

Out of these 42142 cases were disposed of by courts however 217350 cases are at this point impending. It expects that near around 83.8% cases are at this point approaching in the courts expecting fundamental.

When stood out from various states the rate speed of pendency of Territory of Maharashtra is 94%.¹³The pendency pace of the year 2020 is 93.5%..

The problem is especially more serious in the states of Punjab and Manipur where estimates show there are roughly 18,000 and 25,000 intravenous drug users (IDUs) respectively.

In criminal regulation, there is a key guideline known as the 'Assumption of Honesty', which expresses that a denounced is free of guilt by default. This crucial standard is gotten from the proverb "Semper necessitas probandi incumbitei qui agit". This implies that the obligation to prove anything lies with the individual who is charging you. Section 35 of the NDPS Act manages the assumption of the guilty mental condition of a blamed. This suggests that the court will assume that the charged has such a psychological state to continue with the indictment.

Under this Section, a clarification is given expressing "In this part punishable mental state incorporates aim thought process, information on a reality and confidence in, or motivation to

accept, a reality." The NDPS Act, subsequently, requires an individual accused of an offense to refute the assumption against him and show that he has not committed the demonstration comprising an offense.

The Supreme Court of India in Naresh Kumar alias Nitu v. State of Himachal Pradesh held that the assumption of responsibility under Sec. 35, and the necessity of palatable clarifications of ownership under Sec. 54, are rebuttable. In any case, the arraignment stays liable for demonstrating the charges for certain. In particular, Sec. 35(2) states that a reality can be viewed as demonstrated on the off chance that it is laid out for certain and not by the vast majority of the probabilities.

Furthermore, in Noor Aga v. State of Punjab and Ors (2008), the Apex Court held that Sections 35 and 54 impose a reverse burden on the accused, and thus, are constitutional. The standard of proof required by the accused to prove his innocence is lower than that required by the prosecution.

LITERATURE REVIEW:

(Kannappan, 2018) This study centered upon basic survey of changes made into the strategies towards illicit drug use by NDPS Alteration Act 2011. In perspectives on creator execution of strategies is the principal concern now which should be considered for avoidance of illicit drug use.

(Shweta S, 2017) The analyst in present study critically broke down the NDPS Act 1985 and various arrangements under the Demonstration. According to the creator since its sanctioning numerous changes occurred in NDPS Act then likewise it contains numerous deficiencies should be destroyed. There is foundation of extraordinary courts endorsed under the Demonstration however at that point additionally still number of cases anticipating preliminary. Likewise as superfluously brutal circumstances were forced for conceding of bail, many denounced under NDPS cases are waiting into prison as under preliminaries. As per creator, Defilement in framework is one reason for lesser pace of conviction.

Creator brought up an issue that multiple occasions NDPS Act doesn't distinctively differentiates between a relaxed medication client, a hard junkie, a petty peddler and a carefully prepared drug dealer which should be vital to be considered at the hour of choosing disciplines.

Creator further suggested for ad libbing co-appointment among various states for examination related matters and co-appointment among Government and restoration focuses can be an answer for lessening instances of chronic drug use.

(Yadukul S., 2015) Creator in this concentrate basically examined the cases detailed in Chamarajanagar locale of Karnataka for a time of 5 years for example from 2010 till 2014. Being this region on southern line of Karnataka unlawful development and transportation is uncontrolled and subsequently the cases were broke down with this goal.

AIM AND OBJECTIVE:

Following are main object behind currant research.

1. To Understand of drug control laws in India.
2. To Study Bail under the NDPS Act.
3. To Study 'Presumption of Innocence'.
4. To Study role of state Government to Control cases relating to NDPS
5. To Study role of Judiciary to Control cases relating to NDPS

HYPOTHESES:

Following are main Hypotheses behind currant research.

1. There is no any significant difference in speedy disposal of NDPS cases even after setting up of Special Courts for NDPS cases.
2. There is huge pendency of cases in NDPS Courts.
3. Judges are focussing upon conviction rather than using corrective measures like rehabilitation etc. in cases of consumption as well as trafficking.
4. Investigating agencies are not following the procedure strictly prescribed by the lawresulting into low conviction in drug trafficking cases.
5. The implementing agencies face many challenges in implementation of NDPS Act due to procedural lacunas in Act itself.

RESEARCH QUESTION:

Following are main Research Questions regarding currant research.

1. Is India have enough drug control laws for protect society from Drugs or Not?
2. what about Bail under the NDPS Act ?
3. What is 'Presumption of Innocence'?

4. What about role of state Government to Control cases relating to NDPS?
5. What about role of Judiciary to Control cases relating to NDPS?

OVERVIEW ABOUT ACT:

The beginning of medication control regulations in India can be followed back to the Opium Act of 1857. This was trailed by the Opium Act of 1878. and the Dangerous Drugs Act of 1930.

These regulations were intended to control and screen the utilization of a few explicit medications in restricted settings; they were not in view of any distinct standards and didn't contain any general arrangements to wrestle with the issue of chronic drug use in a comprehensive way.

Also, they accommodated pitiful disciplines for their contradiction which were to the tune of three years detainment interestingly guilty parties and 4 years detainment for habitual perpetrators. In the post The Second Great War period, nations started working altogether on establishing common liberties instruments that were intended to permit people to live with pride and regard.

The most clear appearance of this overall rule with regards to wellbeing can be found in Article 25 of the Widespread Announcement of Basic freedoms and Article 12 of the Worldwide Agreement on Financial, Social and Social Privileges which look to advance the most noteworthy feasible guidelines of physical and psychological well-being.

Against this scenery, a few global instruments like the Single Show on Opiate Medications, 1961 and, all the more significantly, the Show on Psychotropic Substances, 1971 unequivocally perceived the need to set up administrative systems and frameworks to wrestle with the issue of illicit drug use.

To bring India's opiates control regulation at standard with worldwide principles and to effectuate the objectives of these arrangements, the Public Medications and Psychotropic Substances Act, 1985 was authorized by the Public authority of India.

The Demonstration is generally viewed as a prohibitionist regulation which looks to wrestle with 2 sorts of offenses: dealing of disallowed substances for example development, production, appropriation and deal, as well as their utilization.

The Indian government is a signatory to the UN Single Show on Opiates Medications (1961), the UN Show on Psychotropic Substances (1971), and the UN Show on Illegal Traffic in Opiate

Medications and Psychotropic Substances (1988), which endorse various measures planned to accomplish the double goals of restricting the utilization of opiates and psychotropic substances for clinical and logical purposes and forestalling their maltreatment.

India's commitments under the three UN drug shows were considered while authorizing the NDPS go about as well as Article 47 of its Constitution. The Demonstration covers the entire of India as well as all Indian residents living external India and all people going on board ships and airplane enrolled in India.

India was among the main emerging nations to form a Public Medication Strategy (NDP) to further develop admittance to drugs for low-pay people, albeit drug organizations have continuously assumed control over the market through medicines from doctors.

A medication cost control request (DPCO) was passed by the Indian government in 1963 to manage the costs of medications on the lookout. Despite the fact that DPCO made little difference, many medication organizations pulled out from the country. Thusly, the development of specific medications moved from India to China. In 2013, DPCO went through a significant change. In 2013, DPCO was considered better to non-controlled items, as there were no new ventures made. At first, opium and morphine were utilized for clinical planning during the nationwide conflict and prompted opiate habit. Veteran warriors who had taken part in these conflicts became dependent on these medications, prompting a conclusion known as officer's illness. During WWII, despite the fact that hemp (maryjane) creation had been actually restricted in 1937, a few legislatures before long found they required it for necessities like rope and cordage.

The Indian government went against the Single Show on Opiate Medications (1961). It was thusly concluded by the show that India would be given an effortlessness time of 25 years to make pot accessible for logical and clinical purposes just and not really for some other explanation. Given the political responsiveness of the issue, India had become committed to worldwide assignments. This constrained the Indian government to wipe out the well established utilization of marijuana. In outcome, the NDPS Act, ordered on 14 November 1985, restricted all opiate drugs in India with very little resistance.

BAIL UNDER THE NDPS ACT:

As an issue of regulation, it is deeply grounded that a liberal methodology in the space of opiates and psychotropic substances is improper. The High Court has set down boundaries in

its different decisions through which it has been given concerning what is expected to be thought about when the blamed is looking for bail for an offense under the NDPS Act. The Apex Court in the case of Union of India v. Ram Samujh and Ors. (1999) observed that

"... .It ought to be borne as a top priority that in a homicide case, the charged killings a couple of people, while those people who are managing in opiate drugs are instrumental in causing demise or in incurring death—blow on a few guiltless youthful casualties, who are powerless; it causes harmful impacts and a lethal effect on the general public; they are a peril to the general public; regardless of whether they are delivered for a brief time, very likely, they would proceed with their terrible exercises of dealing or potentially managing in intoxicants secretly."

Likewise, bail is dealt with contrastingly in opiates cases than it is overall. For the most part, bail is a standard and prison has a place with the exemption class, while, in instances of NDPS, prison has a place with the standard classification and bail has a place with the special case class. It ought to be noticed that Section 37 of the NDPS Act manages the issue of cognizable and non-bailable offenses. In Section 27 of the NDPS Act, it is expressed that all offenses culpable under the Demonstration are cognizable and that no individual blamed for an offense culpable under the Demonstration will be delivered on bail or his bail except if certain circumstances are met. This part applies to offenses under Section 19 or Section 24 or Section 27A and furthermore to offenses that include business amount.

The accompanying circumstances should be met before bail can be conceded under the Demonstration:

- The charged has sensible grounds to accept that he isn't at legitimate fault for the offense.
- The truth of the matter is that assuming bail is allowed, the respondent is probably not going to carry out any wrongdoing while temporarily free from jail.

In one more instance of Territory of Kerala v. Rajesh, the Zenith Court saw that,

"The plan of Section 37 uncovers that the activity of ability to concede bail isn't simply dependent upon the limits contained under Section 439 of the CrPC but at the same time is dependent upon the restriction put by Section 37 which begins with a non—obstante condition."

Under said Section, the usable part is in the pessimistic structure which endorses that no individual blamed for commission of an offense under the Demonstration is qualified for an expansion of bail except if both of the accompanying circumstances are met:

- The indictment should get an opportunity to have a problem with the application.
- The choice must be made assuming the court is fulfilled that there are sensible grounds to accept that he isn't at real fault for the offense.

It is absurd to expect to concede bail if both of these circumstances isn't met. The relevant highlight note is that, when there is a contention between Section 37 of the NDPS Act and Section 439 of the Code of Criminal Methodology, 1973 (CrPC), Section 37 of the NDPS Act wins.

In the case of *Hakim@pilla v. the State of Rajasthan S.B (2019)*., the Court noticed that Part 37 of the NDPS Act is named 'offenses to be cognizable and non-bailable. The part, in any case, starts with a non-obtante condition that expresses that anything offenses are culpable under the Demonstration will be cognizable. The regulation doesn't preclude bail for each wrongdoing. There are likewise offenses under different regulations talked about in Timetable I of the CrPC. To some extent II of the Main Timetable, thing No.3 specifies that assuming the offense being referred to is culpable with detainment for under three years under other regulation, it is bailable and non-cognizable.

Under Section 21 of the NDPS Act, the offense of ownership of a little amount of Hashish (up to 1 kg) can bring about a six-month jail sentence and a fine. The offense is cognizable by excellence of Section 37(1) of the NDPS Act, but as expressed in Thing No.3 in the rundown (To a limited extent II of the Main Timetable), the offense is bailable.

On account of *Rhea Chakraborty v. The Association of India and Ors. (2020)*, the High Court took points of reference from the *Province of Punjab v. Baldev Singh (1999)*. As indicated by the Court, Section 37 of the Punjab Detainment Act makes all offenses under the Demonstration to be cognizable offenses and non-bailable offenses as well as gives rigid circumstances to the award of bail.

Depending on something very similar, Equity Kotwal noticed that "the circumstance has not changed beginning around 1999 when these perceptions were made by the Hon'ble High Court". These perceptions are in this manner pertinent to the present situation with more

prominent power, which is the reason the Hon'ble High Court's decision in Baldev Singh is restricting and all offenses under the NDPS Act are non-bailable.

VARIOUS AMENDMENT IN ACT:

- i. Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989) 1989:

A major amendment to the NDPS Act has been made, providing stricter provisions and the addition of sections for financing illicit traffic under Section 27A. Trafficking in illicit substances includes production, possession, sale, purchase, transportation, warehousing, and anyone booked under section 27A.

- ii. Narcotic Drugs And Psychotropic Substances (Amendment) Act, 2001:

The purpose of this amended act is to rationalize sentencing by making it more objective. The law was now easier for addicts to navigate, and bail was liberalized as well.

- iii. Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014:

On May 1, 2014, the NDPS Amendment 2014 came into effect. Section 71 of the NDPS act describes how drug cases should be handled, including treatment facility rules. As part of the previous amendments, high-level offences under the Act were penalized more severely along with criminalizing the consumption of drugs. In contrast to the earlier procedure which required long steps and multiple licenses of different validity periods, morphine producers only need a single license from the respective State Drugs Controller.

As a result of the amendment, a uniform regulation was achieved across the country, preventing state-by-state conflict. Several essential narcotics that are used in pharmaceutical preparations, such as morphine, fentanyl, and methadone, have been made more accessible to patients. As a compromise, the death penalty for repeat criminal convictions for trafficking large amounts of drugs was reduced to a discrete 30-year sentence. After this amendment, the maximum penalty for “small quantity” offences has been raised from 6 months to 1 year.

- iv. The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2021:

As of December 6, 2021, the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2021 was introduced in the Lok Sabha. The purpose behind it is to replace the Narcotic Drugs and Psychotropic Substances (Amendment) Ordinance, 2021. A drafting error has been corrected in the Narcotic Drugs and Psychotropic Substances Act, 1985 through the bill. The Act outlines the rules and regulations relating to certain operations (such as manufacture,

transport, and consumption of these substances) relating to narcotic substances and psychotropic substances.

The definition of illicit activities was changed in 2014 when the Act was amended. This section was not amended, and it continued to refer to the earlier clause number about punishment for financing such illicit activities. A new clause number is added to the section on penalties in the Bill.

CONCLUSION:

- i. There is no express notice of the term 'cognizant belonging' in the NDPS Act, yet different legal decisions have created it considering the necessities and conditions of the singular case. Section 35 of the NDPS act expresses the accompanying:
- ii. In the occasion of an indictment for a crime under this Demonstration, the Court will assume the presence of a punishable perspective of the blamed, however the litigant might counter with proof that he was not in an at fault perspective concerning the offense charged. In this, the term chargeable perspective envelops aim, thought process, and information on a reality, as well as a faith in or justification for trusting a reality.
- iii. A truth is viewed as demonstrated for reasons for this part just when the court is of the assessment that it exists for certain and not right when its presence of it tends to be shown by a lion's share of the proof.
- iv. From the prior, it tends to be presumed that cognizant belonging implies having a psychological condition of ownership simultaneously as having actual ownership of the unlawful substance. Under criminal regulation, the components of 'Actus Reus' and 'Mens Rea' are fundamental components of a criminal offense. Additionally, under the NDPS Act, the physical and mental ownership of medications are fundamental components to comprise an offense.

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