



Search, Seizure, Arrest and Investigation Under the NDPS Act 1985.



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INTRODUCTION

Chapter V of the N.D.P.S Act confers greater powers, than in the similar provisions of the Cr. P.C., to the drug enforcement officers. However, there is no basic departure.

A. Section 37 of the N.D.P.S Act makes every offence punishable under that Act a cognizable offence, notwithstanding anything contained in the Cr. P.C., 1973 (which classifies offences into cognizable and non-cognizable categories).

B. Section 51 of the N.D.P.S. Act lays down that the provisions of the Cr. P.c., 1973, shall apply in to far as they are not inconsistent with the provisions of the N.D.P.S. Act, to all warrants issued, and arrests searches and seizures made, under the latter Act.

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INTRODUCTION

C. Under Section 53 of the N.D.P.S. Act, the officers can be invested with the powers of an officer in charge of a police station for the investigation of the offences under the N.D.P.S. Act by the respective Governments, by a notification published in the Official Gazette,. This enables them to avail of the powers for investigation given from Sec. 156 onwards, in the Cr. P.C.



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WHEN SEARCH SEIZURE AND ARREST

Action for search, seizure and arrest under the N.D.P.S. Act can be initiated by an authorized officer if there is reason to believe:

A. from personal knowledge, or from
B. information given by any person and taken in writing to the following effect:

i. a person has committed an offence punishable under Chapter IV of N.D.P.S. Act (Sections 15 to 31), or

ii. any narcotic drug psychotropic substance in respect of which an offence under Chapter IV has been committed has been kept or concealed in a building, conveyance or place, or,



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WHEN SEARCH SEIZURE AND ARREST

- iii. any document or other article which may form evidence of the commission of any offence under Chapter IV of N.D.P.S Act has been kept or concealed in the building, conveyance or place.
(As per section 41 and 42 of NDPS Act)



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AUTHORIZED OFFICERS UNDER NDPS ACT

The authorized officers to initiate action for search seizure and arrest under NDPS Act are:

- A.** A Metropolitan Magistrate, a Magistrate of the 1st Class, or any Magistrate of the 2nd Class specially empowered by the State Government in this behalf (Section 41(1)).
- B.** An officer of Gazetted rank of the
- i. Department of Central Excise
 - ii. Department of Narcotics
 - iii. Department of Customs
 - iv. Department of Revenue Intelligence,
 - v. or any other department of Central Government
 - vi. of the Border Security Force, as is empowered in this behalf by general or special order by the Central Govt. [Sec. 41(2) of the N.D.P.S Act],





AUTHORIZED OFFICERS UNDER NDPS ACT

- C. An officer of Gazetted rank of the
- i. Revenue Department
 - ii. Drugs Control Department
 - iii. Excise Department
 - iv. Police, or
 - v. Any other Department of the State Government, as is empowered in this behalf by general or special order of the State Govt. [Sec. 41(2) of the N.D.P.S].





SEARCH, SEIZURE AND ARREST

ISSUE OF WARRENT

A) The Magistrate empowered under sec 41(1) of NDPS Act may issue:

i. A warrant of arrest of the concerned person

ii. A warrant of search of any building, conveyance or place by day or by night.

on a formal request by the authorized officer if they desire to obtain a warrant of arrest or search. Sec 44 and Sec. 103 of Cr. P.C., respectively empowers the Magistrate competent to issue a warrant to conduct arrest and direct search personally. Under Section 72 and Section 99 of the Cr. P.C., the warrants for arrest or for search may be directed to a Police Officers or to any person.

B) A Gazetted Officer authorised under sec 41(2) may authorize any subordinate, above the rank of a peon, sepoy or constable, WHETHER BY DAY OR NIGHT [Sec. 41(2) of N.D.P.S. Act].

i) To arrest person,

ii) To search a building, conveyance or place, in the circumstances stated above.

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ENTRY, SEARCH AND SEIZURE WITHOUT WARRANT

Normally a search warrant or search authorization would be required for action by non-gazetted officers between sunset and sunrise. But if the consequent delay is likely to cause concealment or destruction of evidence or escape of the offender, the officer should record his reasons and proceed to conduct search at any time of day and night (Sec. 42, proviso).

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SEARCH SEIZURE AND ARREST

REPORT TO SUPERIOR OFFICER

OFFICE OF THE ZONAL DIRECTOR
NARCOTICS CONTROL BUREAU
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA
AHMEDABAD ZONAL UNIT



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F. NO. NCB/AZU/CR-01/2003

Dated 20/01/2003

To

The Zonal Director
Jodhpur Zonal Unit
Jodhpur

Subj:- Seizure of 17.5 Kgs of Opium - forwarding of information reg.,

Sir,

In this connection this is to intimate you that AZU has seized 17.5 kgs of opium on 18.01.2003 and in this connection three persons has been arrested.

1. Sh. Punjaram Dhanabhai Rabari aged 33 yrs., R/o Vill: Nagoladi, Taluka Hansar, Post: Hadetar Distt: Zolot, Rajasthan.
2. Sh. Nagibhai Dhudabhai Panchal, age 33 yrs. R/o P.O. Tervada, Taluka Kankrej Distt: Banaskantha
3. Sh. Kalekhan Umarikhan Bahuch age 33 yrs., R/o Opp. Navaganj, Nr. Railway Station, Valol ni Chali, Distt: Patan.

Among the above three, Punja Ram is the prime accused accompanied by the other two. The ownership of the seized opium lies with Punjaram. Punjaram is the resident of Vill: Nagoladi, Taluka Hansar, Post: Hadetar Distt: Zolot, Rajasthan.

This is for your information and necessary action at your end as per NDPS Act.

Thanking you,

Yours faithfully

[Sahajanand]
Intelligence Officer

It is imperative for an officer acting under Sec. 42 NDPS Act to forthwith send to his immediate superior officer, copy of [Sec. 42(2) NDPS Act]

1. Information received and taken down, on the basis of which he organized the search, seizure or arrest

2. Grounds for which a warrant/authorization was not obtained and search was being conducted after sun-set.

Apart from that, any enforcement officer of any rank, whenever he makes any arrest or seizure under the NDPS Act, shall submit a report within 48 hours, furnishing all the relevant particular to his immediate superior officer (Sec. 57 NDPS Act). For Police Officers, forwarding a copy of F.I.R may not satisfy this requirement, as the F.I.R. may not contain details of seizures and arrests.



PERSONAL SEARCH

Section 42(1)(d) of the NDPS Act authorizes detention and personal search before or even without putting any person under arrest. Similar provision also exists in Section 43(b). Section 50 of the Act stipulates that if the person to be searched requires that he should be searched by a Gazetted Officer or Magistrate, such person may be detained for the required time in order to be brought before the Gazetted Officer or the Magistrate for under their directions. The Cr. P.C. does not visualize any situation of personal search before arrest except in a situation of attempted concealment as given in Section 100(3) Cr. P.C.

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PERSONAL SEARCH

Section 50(4) of the NDPS Act as well as Section 51(2) of the Cr. P.C. enjoin upon the requirement that a woman should be searched only by a woman officer and not otherwise.



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SEARCH OF CONVEYANCE

Section 49 of the NDPS Act gives power to any officer authorized under section 42(2) to stop an search conveyance if he has reasons to believe that search animal or conveyance his, or his about to be used for transport of any narcotic drug and psychotropic substance in contravention to the NDPS Act.

This provision also stipulates that if it becomes necessary to fire upon the vehicle to stop it the officer may do so.



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SEARCH, SEIZURE AND ARREST IN PUBLIC PLACE

As laid down in Section 43 of the N.D.P.S. Act, any officer mentioned in Section 42 of the Act may-

a. Seize, in any public place (Public conveyance, hotel, shop or other place used by or accessible to public) or in transit.

i. Any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence under Chapter IV of the NDPS Act has been committed;

ii. Any animal or conveyance, along with such drug or substance, liable to confiscation under the Act [under Section 60(3) of the NDPS Act].



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SEARCH, SEIZURE AND ARREST IN PUBLIC PLACE

iii. Any document or other article which he has reason to believe, may furnish evidence of the commission of an offence punishable under Chapter IV relating to such drug or substance.

b. Detain and search any person whom he has reason to believe to have committed an offence under Chapter IV, and if such person has any narcotic drug or psychotropic substance in possession which appears to be unlawful, arrest such person along with his companions



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ARREST

The method of arrest or the statutory requirements for personal search after arrest have not been given in the NDPS Act and for these, reference should be made to Section 46 of the Cr.P.C. which lays down that in making an arrest, the officer should actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action. If such person forcibly resists the endeavor to arrest him, or attempts to evade arrest, the officer may use all means necessary to effect the arrest, short of causing death to a person who is not accused of an offence punishable with death or imprisonment for life.

Section 51 Cr. P.C. requires that the officer making the arrest should search such person and place in safe custody all articles other than necessary wearing apparels found and seized from the arrested person,, a receipt for the same should be given to him.

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ARREST

The N.D.P.S. Act is not clear about the basic constitutional obligation to restrict detention of an attested person within 24 hours excluding transit time to the nearest court. On this time limit for investigation the provisions of Section 57 and Section 167 of the Cr.P.C. have to be followed. These provisions are:

Section 57 Cr.P.C. : No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

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ARREST

Section 167 Cr.P.C. (relevant extracts):

i. Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty four hours the officer in charge of the Police Station or the police officer making the investigation shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary relating to the case and shall at the same time forward the accused to such Magistrate.

ii. The Magistrate may, whether he has or has not jurisdiction to try the case, authorize the detention of the accused in such custody for a term not exceeding fifteen days in the whole.

Provided that:-

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ARREST

a. The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police,. Beyond the period of fifteen days but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding, ninety days, where the investigation relates to an offence punishable with imprisonment for a term of not less than ten years.

b. No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him.

[Explanation I :-

For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a) the accused shall be detained in custody so long as he does not furnish bail]

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ARREST

The officer in charge of the Police Station may, where a judicial Magistrate is not available, transmit to the nearest Executive Magistrate on whom the powers of a judicial magistrate, or metropolitan magistrate have been conferred, a copy of the entry in the diary herein after prescribed relating to the case, and shall at the same time, forward the accused to such Executive Magistrate and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorize the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate.





OTHER PROVISIONS

A. Section 56 of the NDPS Act makes it obligatory for all the enforcement officers of DEPARTMENT NAMED IN Sec. 42 thereof to assist each other, upon notice given or request made, in carrying out the provisions of the N.D.P.S. Act

B. The basic provisions of search and seizure are contained in Section 100 Cr.P.C. in connection with search under a warrant obtained from a court. These provisions are complementary to those contained in Section 42 of the NDPS Act and would, therefore, deserve to be reproduced along with Section 47 of Cr. P.C..

Section 100 Cr. P.C. Persons in charge of closed place to allow search:-

1. Whenever any place liable to search or inspection under this Chapter is closed, any person residing in , or being in charge of , such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto and afford all reasonable facilities for a search therein.





OTHER PROVISIONS

2. If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of Section 47.

3. Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman the search shall be made by another woman with strict regard to decency.

4. Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search , to attend and witness to them or any of them to do so.



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5. The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.
6. The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section signed by the said witnesses, shall be delivered to such occupant or person.
7. When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.



OTHER PROVISIONS

8. Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called up on to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

Section 47, Cr. P.C. :

1. If any person action under a warrant of arrest, or any police officer having authority attest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of , such place, shall on demand of such person action as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

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2. If ingress to such place cannot be obtained under sub-section(I) it shall be lawful in any case for a person action under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.





OTHER PROVISIONS

3. Any police officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

4. As regards arrest without warrant, the powers of a police officer are detailed in Sections 41 and 42 Cr.P.C. In respect of drug enforcement, the specific provision would be Section 41(a) Cr.P.C. which authorizes arrest of a person concerned in a cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. As already explained, the Cr.P.C. does not have any provision for pre-arrest detention or pre-arrest personal search, which are permissible under, respectively, Section 50(2) and 42(1)(d) of the N.D.P.S. Act. Section 100(3) of Cr.P.C. contains a provision for personal search, if any person is found to be concealing in his person any article for which the house search is being made.



OTHER PROVISIONS

5. As regards powers of house search without warrant under section 165 Cr.P.C (read with Section 100 & Section 47 of Cr.P.C.), it is exercisable case. In this respect, the powers under Section 41(2) and 42 of N.D.P.S. Act are wider and more effective. Section 43 and Section 49 of N.D.P.S. Act extend these powers to a larger range of situations and circumstance.

C.Sections 44,45 and 48 mainly relate to illicit cultivation of coca, cannabis or opium poppy plants and the powers of search and seizure extend to these plants as well. If seizure is not practicable, an officer authorized in Section 42 may serve an order on the owner or occupier of the goods propitiating removal thereof without permission. Section 48 authorizes a metropolitan magistrate, a judicial magistrate of the 1st class or magistrate specially empowered in this behalf by the State Government to order attachment of illicitly cultivated standing opium poppy, Cannabis or coco plants and even to pass order for destruction of the same.



INVESTIGATION

A. The power of investigation of cases under the NDPS Act (subsequent to the initial operations of search, seizure and arrest under section 41, 42, 43, 44, 49 and 50 of the NDPS Act) and the responsibility of submitting the report on investigation to the competent court, are given vide Section 52 of the NDPS Act to the

- i. Officer in charge of the nearest Police Station, and
- ii. The officer so empowered under Section 53 of the NDPS Act.

It is before either of the above two classes of officers (apart from the Magistrate who had issued the warrant in cases in which action has been taken on the strength of a warrant) that

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INVESTIGATION

all articles seized and all persons arrested under the NDPS Act should be forwarded without unnecessary delay. The officer/authority receiving the arrested persons or seized articles shall take all necessary measures according to law for the disposal of such persons or articles.

B. Section 55 of the NDPS Act further places the responsibility on the officer in charge of a Police Station for the safe custody of all articles seized within the local area of the Police Station and made over to officer in charge by any other officer, pending orders of the Magistrate as to its disposal. The seized articles, and the samples taken from the same are to be sealed by both officer in charge of the Police Station and the officer in charge of a



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INVESTIGATION

Police Station is required to submit reports of investigation to the appropriate court u/s 173 of the Cr.P.C., the other invested officers u/s 53 of the NDPS Act are only required to file a complaint before such court as stipulated u/s 190(a) of the Cr.P.C. Such specially invested officers have the powers and responsibilities of the officer in charge of a Police Station for the strictly specific purpose of investigation of offences under the NDPS Act. This position has been clearly enunciated by the Gujarat High Court (on the authority of the Supreme Court on some analogous provisions under some other Acts) in the case of A.B.Agarwal on 16.6.88 (Cr.M.A.144/88).



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INVESTIGATION

C. The responsibilities under SEC. 52(4) of the NDPS Act are 'post-initiation of a case (registration of a cognizable case) under the said Act, and for subsequent searches, seizures, interrogation, recording of statements etc., the powers given in the Cr.P.C. are available to the officer in charge of a Police Station as well as to an authorized officer under section 53 of the NDPS Act. The relevant sections of the Cr.P.C. are.

a. Sec. 156 Cr.P.C :- to investigate any cognizable case without the order of a Magistrate.

b. Sec. 157 Cr.P.C:- to proceed to the spot, or to depute a subordinate officer to the spot, to investigate the facts and to find out and arrest the accused.

c. Proviso to 157 Cr.P.C.:- to decline to investigate if facts so justify.

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d. Section 91 Cr.P.C :- to issue order for production of article or thing by the Custodian.

e. Section 160 Cr.P.C.:- to summon witnesses for interrogation (women or persons below 15 years of age should be interrogated in their residences).

f. Section 161 Cr.P.C:- to examine witnesses and to record statements (witness not to sign statement before police officer).

g. Section 165 Cr.P.C.:-to search any place within the jurisdiction, without a warrant from a Court for avoiding delay (the grounds for which are to be recorded in writing, along with grounds for suspicion and the articles or things for which search is to be made). There is no restriction on search between sun-set and sunrise.

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h. Section 166(3) Cr.P.C.:- to search any place outside jurisdiction if otherwise evidence may be concealed or destroyed.

The powers under Section 160, 161, 165 and 166 Cr.P.C. are also exercisable by a subordinate officer, duly authorized by the officer in charge. For 166 Cr.P.C. are also exercisable by a subordinate officer, duly authorized by the officer in charge. For 166 Cr.P.C. such subordinate should not be below the rank of Sub-Inspector, and in other cases he should be of the rank to be prescribed by the State Government. Read with Section 41(2), 42 and 53 of the N.D.P.S Act and the notifications issued there under, similar powers of delegation, to subordinate

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officers of specified rank should also be available for officers of other enforcement agencies.

D. However, section 67 of the NDPS Act provides powers similar to Section 91 and Section 160 of the Cr.P.C. to an officer referred to in Section 43 N.D.P.S. Act and authorized by Government in this behalf, to:

- i. Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made there under.
- ii. Require any person to produce or deliver any document or thing useful or relevant to the enquiry.
- iii. Examine any person acquainted with the facts and circumstances of the case.

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INVESTIGATION

This is the most important section for the investigation. As the officers authorized under section 43 are not police officers the statement recorded before such officers are admissible as evidence in court of law (Section 25 of Evidence Act). On the basis of section 67 statement many convictions have been given by various courts.

E. Section 68 of the N.D.P.S. Act extends its protection for the secrecy of the source of information of an officer acting in exercise of powers vested by this Act or Rules thereunder. There is no similar protection in the Cr. P.C. and the provisions of Section 68 will prevail in view of the enabling provision in Section 51 of N.D.P.S. Act.



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