

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

(61 of 1985)

[16th September, 1985]

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 ¹, 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.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement.-(1) This Act may be called the Narcotic Drugs and Psychotropic Substances Act, 1985.

(2) It extends to the whole of India ² [and it applies also-
(a) to all citizens of India outside India;
(b) to all persons on ships and aircrafts registered in India.
Wherever they may be.]

(3) It shall come into force on such date ³ as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

COMMENTS

This is a special Act, while adopting the liberal construction of the Act, it is found that the Act has been enacted with a view to make stringent provisions for the control and regulation of operations relating to the narcotic drugs and psychotropic substances; *Gulam Mohiuddin v. State of Jammu and Kashmir*, (1994) 1 Crimes 204 (J & K).

2. Definitions.-In this Act, unless the context otherwise requires,--

⁴ [(i) "addict" means a person who has dependence on any narcotic drug or psychotropic substances;]

(ii) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

1. Ins. by Act 2 of 1989, sec. 2 (w.e.f. 29-5-1989).

2. Ins. by Act 9 of 2001, sec. 2 (w.e.f. 2-10-2001).

3. Came into force on 14-11-1985, vide 5.0. 821 (E), dated 14th November, 1985.

4. Subs. by Act 9 of 2001, sec. 3, for clause (i) (w.e.f. 2-10-2001).

(iii) "cannabis (hemp)" means-

(a) *charas*, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

(iv) "cannabis plant" means any plant of the genus cannabis; (v) "coca derivative" means

(a) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(b) ecgonine and all the derivatives of ecgonine from which it can be recovered;

(c) cocaine, that is, methyl ester of benzoyl-ecgonine and its salts; and

(d) all preparations containing more than 0.1 percent of cocaine;

(vi) "coca leaf" means

(a) the leaf of the coca plant except of a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;

(b) any mixture thereof with or without any neutral material; but does not include any preparation containing not more than 0.1 per cent. of cocaine;

(vii) "coca plant" means the plant of any species of the genus *Erythroxylon*;

¹ [(viii) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

(viib) "controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorised under section 50A with a view to identifying the persons involved in the commission of an offence under this Act;

(viic) "corresponding law" means any law corresponding to the provisions of this Act;

² [(viid) "controlled substance" means any substance which the Central Government may, having regard to the available information as to its

1. Ins. by Act 9 of 2001, sec. 3 (w.e.f. 2-10-2001).

2. Clause (viii) ins. by Act 2 of 1989, sec. 3 (w.e.f. 29-5-1989) and relettered as clause (viid) by Act 9 of 2001, sec. 3 (w.e.f. 2-10-2001).

possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;]

(viii) "conveyance" means a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel;

¹
[(viiiia) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant;

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv); other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the aforementioned activities;]

(ix)"International Convention" means

(a) the Single Convention on Narcotic Drugs, 1961 adopted by the United Nations Conference at New York in March, 1961;

(b) the protocol, amending the Convention mentioned in sub-clause (a), adopted by the United Nations Conference at Geneva in March, 1972;

(c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971; and

(d) any other international convention, or protocol or other instrument amending an international convention, relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by India after the commencement of this Act;

1. Ins. by Act 2 of 1989, sec. 3 (w.e.f. 29-5-1989).

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

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

(2) refining of such drugs or substances;

(3) transformation of such drugs or substances; and

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

(xi) "manufactured drug" means

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

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

(xii) "medicinal cannabis", that is, medicinal hemp, means any extract or tincture of cannabis (hemp);

(xiii) "Narcotic Commissioner" means the Narcotics Commissioner appointed under section 5;

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

(xv) "opium" means

(a) the coagulated juice of the opium poppy; and

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine:

(xvi) "opium derivative" means

(a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as dia morphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

(xvii) "opium poppy" means

(a) the plant of the species *Papaver somniferum* L.; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

(xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after

(xix) harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

(xix) "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids;

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

(xx) "prescribed" means prescribed by rules made under this Act;

(xxi) "production" means the separation of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained:

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

¹ [(xxiiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette.]

(xxiv) "to import inter-State" means to bring into a State or Union territory in India from another State or Union territory in India;

(xxv) "to import into India", with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

Explanation.-For the purposes of this clause and clause (xxvi), "India" includes the territorial waters of India;

(xxvi) "to export from India", with its grammatical variations and cognate expressions, means to take out of India to a place outside India;

(xxvii) "to export inter-State" means to take out of a State or Union territory in India to another State or Union territory in India;

(xxviii) "to transport" means to take from one place to another within the same State or Union territory;

¹
[(xxviii) "use", in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;]

(xxix) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

Explanation.-For the purposes of clauses (v), (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent of a substance means a preparation in which one gram of substance, if solid, or one milliliter of substance, if liquid, is contained in every one hundred milliliter of the preparation and so on in proportion for any greater or less percentage:

Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis, which it may deem appropriate for such calculation.

COMMENTS

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(i) A person, who assists a narcotics trafficker in concealing the narcotics in his apartment so that the trafficker may avoid detection, is involved in illicit traffic; *R. v. Jackson*, (1977) 35 CCC (2d) 331.

(ii) It may be noted that clause (iv) of section 2 (viii) is independent of other clauses and is in the nature of a residuary provision. It would include an activity of distribution; *R. Parkash v. State of Karnataka*, (1980) Cr LJ 165.

(iii) The definition of the term 'manufacture' as contained in section. 2(x) is .an inclusive one. where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning; *S.K. Gupta v. K.P. Jain*, AIR 1979 SC 734.

(iv) Heroin being an opium is manufactured drug; *I.Paul Kuki v. State of West Bengal*, (1993) 3 Crimes 660 (Cal) (DB).

(v) It is true that opium is substance, which once seen and smelt can never be forgotten because opium possesses a characteristic appearance and a very strong and characteristic scent. It is possible for people to identify opium without having to subject the product to a chemical analysis. It is only when opium is in a mixture so diluted that its essential characteristics are not easily visible or capable of being apprehended by the senses that a chemical analysis may be necessary; *Baidyanath Mishra v. State of Orissa*, (1967) SCD 1165: 34 Cut LT 1.

3. Power to add to or omit from the list of psychotropic substances.- The Central Government may, if satisfied that it is necessary or expedient so to do on the basis of (a) the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for

1. Ins. by Act 2 of 1989, sec. 3 (w.e.f. 29-5-1989).

abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material; and

- (b) the modifications or provisions (if any) which have been made to, or in any International Convention with respect to such substance, natural material or salt or preparation of such substance or material.

By notification in the Official Gazette, add to, or, as the case may be, omit from, the list of psychotropic substances specified in the Schedule such substance or natural material or salt or preparation of such substance or material.

CHAPTER II AUTHORITIES AND OFFICERS

4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc.-(1) Subject to the provisions of the Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under the sub-section include measures with respect to all or any of the following matters, namely:

- (a) coordination of actions by various officers, State Governments and other authorities
 - (i) under this Act, or
 - (ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;
- (b) obligations under the International Conventions;
- (c) assistance to the concerned authorities in foreign countries and concerned international organisations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;
- (d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;
- (e) such other matters as, the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or a hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures.

COMMENTS

Section 4(1) of the Act does not create the Narcotics Control Bureau. It only authorizes the Central Government to take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein; *State v. Kulwant Singh*, AIR 2003 SC 1599.

5. Officers of Central Government.-(1) Without prejudice to the provisions of sub-section (3) of section 4, the Central Government shall appoint a Narcotics Commissioner and may also appoint such other officers with such designations as it thinks fit for the purposes of this Act.

(2) The Narcotics Commissioner shall, either by himself or through officers subordinate to him, exercise all powers and perform all functions relating to the superintendence of the cultivation of the opium poppy and production of opium and shall also exercise and perform such other powers and functions as may be entrusted to him by the Central Government.

(3) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government, or, if so directed by that Government, also of the Board or any other authority or officer.

6. The Narcotic Drugs and Psychotropic Substances Consultative Committee.-(1) The Central Government may constitute, by notification in the Official Gazette, an advisory committee to be called "The Narcotic Drugs and

Psychotropic Substances Consultative Committee" (hereafter in this section referred to as the Committee) to advise the Central Government on such matters relating to the administration of this Act as are referred to it by that Government from time to time.

(2) The Committee shall consist of a Chairman and such other members, not exceeding twenty, as may be appointed by the Central Government.

(3) The Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do for the efficient discharge of any of its functions constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter any person (including a non-official) who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the offices of and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint a person who is not a member of the Committee as a member of any of its sub-committees, shall be such as may be prescribed by rules made by the Central Government.

7. Officers of State Government.-(1) The State Government may appoint such officers with such designations as it thinks fit for the purposes of this Act.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the State Government, or, if so directed by that Government also of any other authority or officer.

CHAPTER IIA

NATIONAL FUND FOR CONTROL OF DRUG ABUSE

7A. National Fund for Control of Drug Abuse. -(1) The Central Government may, by

notification in the Official Gazette, constitute a Fund to be called the National Fund for Control

of Drug Abuse (hereafter in this Chapter referred to as the Fund) and there shall be credited

thereto-

(a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;

- (b) the sale proceeds of any property forfeited under Chapter V A;
- (c) any grants that may be made by any person or institution;

(d) any income from investment of the amounts credited to the Fund under the aforesaid provisions.

² [(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for

- (a) Combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;
- (b) Controlling the abuse of narcotic drugs and psychotropic substances;
- (c) identifying, treating, rehabilitating addicts;
- (d) Preventing drug abuse;
- (e) Educating public against drug abuse;
- (f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.]

(4) The Governing Body shall consist of a Chairman (not below the rank of an Additional Secretary to the Central Government) and such other members not exceeding six as the Central Government may appoint.

(5) The Governing Body shall have the power to regulate its own procedure.

7B. Annual report of activities financed under the fund. - The Central Government shall, as soon as may be, after the end of each financial year, cause to be published in the Official Gazette, a report giving an account of the activities financed under section 7-A during the financial year, together with a statement of accounts.]

CHAPTER III PROHIBITION, CONTROL AND REGULATION

8. Prohibition of certain operations. -No person shall

- (a) cultivate any coca plant or gather any portion of coca plant; or
- (b) cultivate the opium poppy or any cannabis plant; or

1. Ins. by Act 2 of 1989, sec. 4 (w.e.f. 29-5-1989).

2. Subs. by Act 9 of 2001, sec. 4, for sub-sections (2) and (3) (w.e.f. 2-10-2001).

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of *ganja* for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

¹
[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

COMMENTS

(i) There need be no physical connection between the goods and the person charged. A man may be miles and miles away from the goods and yet if proof is available that he had an interest in or was concerned in illegal importation of goods he would be guilty of the offence; Addl. Collector of Customs v. Sitaram Agarwalla, AIR 1962 Cal 242 approved in Radha Kishan v. Union of India, AIR 1965 SC 1072.

(ii) If the person possessing the drugs or substances does not carry himself but entrusts the same to some other person for carriage in a car, then that person (driver of the car) would be the person who transports the said drugs and the person who directs him to do so would be the abettor of the offence of transporting; Narvir Chand v. State, (1952) Cr LJ 246.

(iii) All manufactured drugs are also narcotic drugs, possession of which is prohibited under this section; T. Paul Kuki v. State of West Bengal, (1993) 3 Crimes 660 (Cal) (DB).

²
[8A. Prohibition of certain activities relating to property derived from offence.-No person shall

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.]

9. Power of Central Government to permit, control and regulate. -(1) Subject to the provisions of section 8, the Central Government may, by rules-

(a) permit and regulate-

(i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) the production and manufacture of opium and production of poppy straw;

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture of manufactured drugs (other, than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(vi) the manufacture, possession, transport import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

- (a) empower the Central Government to fix from time to time the limits within which licences may be given for the cultivation of the opium poppy;
- (b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorized in this behalf by the Central Government;
- (c) prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefor; the authorities by which such licences may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding, refusal or cancellation of licences shall lie;
- (d) prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorized in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;
- (e) empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;
- (f) provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighment, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;
- (g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorized in this behalf;
- (h) prescribe the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees may be charged therefor;
- (i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor;
- (j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transshipped; the forms and conditions of certificates, authorizations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificates, authorizations or permits may be granted and the fees that may be charged therefor.

¹
[9A. Power to control and regulate controlled substances.-(1) If the Central Government is of the opinion that, having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.]

10. Power of State Government to permit, control and regulate.-(1) Subject to the provisions of section 8, the State Government may, by rules

(a) permit and regulate-

(i) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw;

(ii) the possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of opium;

(iii) the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase consumption or use of cannabis (excluding *charas*);

(iv) the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(v) the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of manufactured drugs other than prepared opium and of coca leaf and any preparation containing any manufactured drug;

(vi) the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption:

Provided that save in so far as may be expressly provided in the rules made under sub-clauses (iv) and (v), nothing in section 8 shall apply to the import inter-State, export inter-State, transport, possession, purchase, sale, use or consumption of manufactured drugs which are the property and in the possession of the Government:

Provided further that such drugs as are referred to in the preceding proviso shall not be sold or otherwise delivered to any person who, under the rules made by the State Government under the aforesaid sub-clauses, is not entitled to their possession;

(b) prescribe any other matter requisite to render effective the control of the State Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) empower the State Government to declare any place to be warehouse wherein it shall be the duty of the owners to deposit all such poppy straw as is legally imported inter-State and is intended for export inter-State or export from India; to regulate the safe custody of such poppy straw warehoused and the removal of such poppy straw for sale or export inter-State or export from India; to levy fees for such warehousing and to prescribe the manner in which and the period after which the poppy straw warehoused shall be disposed of in default of payment of fees;

(b) provide that the limits within which licences may be given for the cultivation of any cannabis plant shall be fixed from time to time by or under the orders of the State Government;

(c) provide that only the cultivators licensed by the prescribed authority of the State Government shall be authorized to engage in cultivation of any cannabis plant;

(d) require that all cannabis, the produce of land cultivated with cannabis plant, shall be delivered by the cultivators to the officers of the State Government authorized in this behalf;

(e) empower the State Government to fix from time to time, the price to be paid to the cultivators for the cannabis delivered;

(f) prescribe the forms and conditions of licences or permits for the purposes specified in sub-clauses (i) to (vi) of clause (a) of subsection (1) and the authorities by which such licences or permits may be granted and the fees that may be charged therefor.

11. Narcotic drugs and psychotropic substances, etc., not liable to distress or attachment.- Notwithstanding anything to the contrary contained in any law or contract, non-narcotic drug, psychotropic substance, coca plant, the opium poppy or cannabis plant shall be liable to be

distrained or attached by any person for the recovery of any money under any order or decree of any court or authority or otherwise.

12. Restrictions over external dealings in narcotic drugs and psychotropic substances.-No person shall engage in or control any trade whereby a narcotic drug or psychotropic substance is obtained outside India and supplied to any person outside India save with the previous authorisation of the Central Government and subject to such conditions as may be imposed by that Government in this behalf.

13. Special provisions relating to coca plant and coca leaves for use in the preparation of flavouring agent.-Notwithstanding anything contained in section 8, the Central Government may permit, with or without conditions, and on behalf of Government, the cultivation of any coca plant or gathering of any portion thereof or the production, possession, sale, purchase, transport, import inter-State, export inter-State or import into India of coca leaves for use in the preparation of any flavouring agent which shall not contain any alkaloid and to the extent necessary for such use.

14. Special provision relating to cannabis.-Notwithstanding anything contained in section 8, Government may, by general or special order and subject to such conditions as may be specified in such order, allow cultivation of any cannabis plant for industrial purposes only of obtaining fibre or seed or for horticultural purposes.

CHAPTER IV OFFENCES AND PENALTIES

¹

15. Punishment for contravention in relation to poppy straw. -Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;
- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

16. Punishment for contravention in relation to coca plant and coca leaves.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years or with fine which may extend to one lakh rupees.

17. Punishment for contravention in relation to prepared opium. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both; or

- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees; or
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

18. Punishment for contravention in relation to opium poppy and opium. -Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;
 - (b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:
- Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

- (c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.]

19. Punishment for embezzlement of opium by cultivator. -Any cultivator licensed to cultivate the opium poppy on account of the Central Government who embezzles or otherwise illegally disposes of the opium produced or any part thereof, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

20. Punishment for contravention in relation to cannabis plant and cannabis.-Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,

- (a) cultivates any cannabis plant; or
 - (b) produces, manufactures, possesses, sells, purchases, transports, imports inter- State, exports inter-State or uses cannabis, shall be punishable
- ¹
- [(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and
 - (ii) where such contravention relates to sub-clause (b),
- (A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;
 - (B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for

1. Subs. by Act 9 of 2001, sec. 7, for sub-clauses (i) and (ii) (w.e.f. 2-10-2001).

- a term which may extend to ten years and with fine which may extend to one lakh rupees;
- (C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]

¹
[21. Punishment for contravention in relation to manufactured drugs and preparations.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;
- (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees;
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

22. Punishment for contravention in relation to psychotropic substances. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;
- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable

1. Subs. by Act 9 of 2001, sec. 8, for sections 21 to 23 (w.e.f. 2-10-2001).

to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

23. Punishment for illegal import in to India, export from India or transshipment of narcotic drugs and psychotropic substances.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorization issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable,-

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees or with both;
- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment- for a term which may extend to ten years, and with fine; which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]

24. Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12.-Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorization of the Central Government or otherwise than in accordance with the conditions (if any) of such authorization granted under section 12, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

¹
[25. Punishment for allowing premises, etc., to be used for commission of an offence.-Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.]

²
[25A. Punishment for contravention of orders made under section 9A. -If any person contravenes an order made under section 9A, he shall be punishable

1. Subs. by Act 9 of 2001, sec. 9, for section 25 (w.e.f. 2-10-2001).

2. Ins. by Act 2 of 1989, sec. 7 (w.e.f. 29-5-1989).

with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.]

26. **Punishment for certain acts by licensee or his servants.**-If the holder of any licence, permit or authorisation granted under this Act or any rule or order made thereunder or any person in his employ and acting on his behalf

(a) omits, without any reasonable cause, to maintain accounts or to submit any

return in accordance with the provisions of this Act, or any rule made thereunder;

(b) fails to produce without any reasonable cause such licence, permit or authorisation on demand of any officer authorised by the Central Government or State Government in this behalf;

(c) keeps any accounts or makes any statement which is false or which he knows or has reasons to believe to be incorrect; or

(d) wilfully and knowingly does any act in breach of any of the conditions of licence, permit or authorisation for which a penalty is not prescribed elsewhere in this Act,

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

COMMENTS

It is well settled that a licensee is responsible for the act of his employee done within the scope of his authority although contrary to the instructions of the licensee; *Allen v. Whitehead*, (1930) 1 KB 211.

¹
[27. Punishment for consumption of any narcotic drug or psychotropic substance.-

Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,-

- (a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and
- (b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.]

²
[27 A. Punishment for financing illicit traffic and harbouring offenders.-Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with

- 1. Subs. by Act 9 of 2001, sec. 10, for section 27 (w.e.f. 2-10-2001).
- 2. Ins. by Act 2 of 1989, sec. 8 (w.e.f. 29-5-1989).

rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees].

28. Punishment for attempts to commit offences.-Whoever attempts to commit any offence punishable under this Chapter or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

COMMENTS

There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence; *Abhayanand Mishra v. State of Bihar*, AIR 1961 SC 1698.

29. Punishment for abetment and criminal conspiracy.-(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which

- (a) would constitute an offence if committed within India; or
- (b) under the laws of such place, is an offence relating to narcotic drugs or

psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

COMMENTS

Where a person possessing illicit drug does not carry it himself but entrusts it to some other person for carriage in a car and that person carries it knowingly, then the driver of the car would be the person who transports the drug, and the person who directs him to do so would be the abettor of the offence of transporting; *Narvirchand v. The State*, (1952)Cr LJ 246.

30. Preparation.-If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of [sections 19, 24 and 27] and for offences involving commercial quantity of any

1. Subs. by Act 9 of 2001, sec. 11, for certain words (w.e.f. 2-10-2001).

narcotic drug or psychotropic substance and from the circumstances of the case] it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid:

Provided that the court may, for reasons to be recorded in the judgment, impose a higher fine.

COMMENTS

For making out a case under this section against any person, it is not enough for the prosecution to make out a case of mere preparation to commit an offence stated therein. It has further to make out a case that a reasonable inference can be drawn from the circumstances that if not prevented by circumstances independent of his will, that person was determined to carry out his intention to commit the offence; *D.N. Anerao v. Mahesh Kumar*, (1986) 9 ECC 76.

[31. **Enhanced punishment for offences after previous conviction.**-(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India.]

²[31A. Death penalty for certain offences after previous conviction.-(1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under ³[section 19,

1. Subs. by Act 9 of 2001, sec. 12, for section 31 (w.e.f. 2-10-2001).
2. Ins. by Act 2 of 1989, sec. 9 (w.e.f. 29-5-1989).
3. Subs. by Act 9 of 2001, sec. 13, for certain words (w.e.f. 2-10-2001).

(2) where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of ¹[section 19, section 24 or section 27 A and for offences involving commercial quantity of any narcotic drug or psychotropic substance], such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a court in India.]

32. Punishment for offence for which no punishment is provided.-Whoever contravenes any provision of this Act or any rule or order made, or any condition of any licence, permit or authorisation issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

²**[32A. No suspension, remission or commutation in any sentence awarded under this Act.**-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted.]

³[328. Factors to be taken into account for imposing higher than the minimum punishment.-Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:

- (a) the use or threat of use of violence or arms by the offender;
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;
- (c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;
- (d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;
- (e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and
- (f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.]

33. Application of section 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1958.-Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of

age or that the offence for which such person is convicted is punishable under section 26 or section 27.

1. Subs. by Act 9 of 2001, sec. 13, for certain words (w.e.f. 2-10-2001).

2. Ins. by Act 2 of 1989, sec. 10 (w.e.f. 29-5-1989).

3. Ins. by Act 9 of 2001, sec. 14 (w.e.f. 2-10-2001).

COMMENTS

The question of age of the person is relevant not for the purpose of determining his guilt but only for the purpose of punishment which he should suffer for the offence of which he has been found on the evidence guilty; *Ramji Missar v. State of Bihar*, 1963 (2) Cr LJ 173.

34. Security for abstaining from commission of offence.-(1) Whenever any person is convicted of an offence punishable under any provision of Chapter IV and the court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of any offence under this Act, the court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from commission of any offence under Chapter IV during such period not exceeding three years as it thinks fit to fix.

(2) The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set-aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate court or by the High Court or Sessions Judge when exercising the powers of revision.

35. Presumption of culpable mental state.-(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.-In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

¹
[36. Constitution of Special Courts.-(1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Explanation.-In this sub-section, "High Court" means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.]

1. Subs. by Act 2 of 1989, sec. 11, for section 36 (w.e.f. 29-5-1989).

[36A. Offences triable by Special Courts.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

- (a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;
- (b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under subsection (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers

- (i) when such person is forwarded to him as aforesaid; or
- (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;
- (d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

1. Section 36A ins. by Act 2 of 1989, sec. 11 (w.e.f. 29-5-1989) and subs. by Act 9 of 2001, sec. 15 (w.e.f. 2-10-2001).

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27 A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.]

COMMENTS

Section 36A(1)(d) authorizes the Special Courts to take cognizance of offences under the Act on the basis of a police report or upon the complaint made by an officer of the Central Government; State v. Kulwant Singh, AIR 2003 SC 1599.

¹**[36B. Appeal and revision.**-The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

¹**[36C. Application of Code to proceedings before a Special Court.**-Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.]

²**[36D. Transitional provisions.**-(1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), which is triable by a Special Court shall, until a Special Court is constituted under section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of

1. Ins. by Act 2 of 1989, sec. 11 (w.e.f. 29-5-1989).

2. Section 36D ins. by Act 2 of 1989, sec. 11 (w.e.f. 29-5-1989) and subs. by Act 9 of 2001, sec. 16 (w.e.f. 2-10-2001).

1974) to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).]

¹**[37. Offences to be cognizable and non-bailable.**-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

COMMENTS

(i) It has been repeatedly stressed that NDPS cases should be tried as early as possible because in such cases normally accused are not released on bail; *A.N. Patel v. State of Gujarat*, AIR 2003 SC 2172.

(ii) It is plain from the language of section 37(1) (b) that the court must adopt a negative attitude towards bail but turn positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of offence under the Act and secondly that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted; *Sukhdev Singh v. Union Territory of Chandigarh*, (1986) Cr LJ 1757 (P & H).

38. Offences by companies.-(1) Where an offence under Chapter IV has been committed by a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter IV has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of

1. Subs. by Act 2 of 1989, sec. 12, for section 37 (w.e.f. 29-5-1989).

2. Subs. by Act 9 of 2001, sec. 17, for "a term of imprisonment of five years or more under this Act" (w.e.f. 2-10-2001).

the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

39. Power of court to release certain offenders on probation.-(1) When any addict is found guilty of an offence punishable under section 27 [or for offences relating to small quantity of any narcotic drug or psychotropic substance] and if the court by which he is found guilty is of the opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender, that it is expedient so to do, then, notwithstanding anything contained in this Act or any other law for the time being in force, the court may, instead of sentencing him at once to any imprisonment, with his consent, direct that he be released for undergoing medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognised by Government and on his entering into a bond in the form prescribed by the Central Government, with or without sureties, to appear and furnish before the court within a period not exceeding one year, a report regarding the result of his medical treatment and, in the meantime, to abstain from the commission of any offence under Chapter IV.

(2) If it appears to the court, having regard to the report regarding the result of the medical treatment furnished under sub-section (1), that it is expedient so to do, the court may direct the release of the offender after due admonition on his entering into a bond in the form prescribed by the Central Government, with or without sureties, for abstaining from the commission of any offence under Chapter IV during such period not exceeding three years as the court may deem fit to specify or on his failure so to abstain, to appear before the court and receive sentence when called upon during such period.

40. Power of court to publish names, place of business, etc., of certain offenders.-(1) Where any person is convicted of any of the offences punishable under section 15 to section 25 (both inclusive), section 28, section 29 or section 30, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court.

1. Ins. by Act 9 of 2001, sec. 18 (w.e.f. 2-10-2001).

CHAPTER V PROCEDURE

¹
[41. Power to issue warrant and authorisation.-(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed:

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or

search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

42. Power of entry, search, seizure and arrest without warrant or authorisation.-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs

1. Subs. by Act 9 of 2001, sec. 19, for sections 41 to 43 (w.e.f. 2-10-2001).

control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

43. Power of seizure and arrest in public place.-Any officer of any of the departments mentioned in section 42 may

- (a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document

or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act;

- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

44. Power of entry, search, seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.-The provisions of sections 41, 42 and 43, shall so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, [or controlled substance], shall be construed as including references to coca plant, the opium poppy and cannabis plant.

45. Procedure where seizure of goods liable to confiscation not practicable.-Where it is not practicable to seize any goods (including standing crop) which are liable to confiscation under this Act, any officer duly authorised under section 42 may serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

46. Duty of land holder to give information of illegal cultivation.-Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

47. Duty of certain officers to give information of illegal cultivation.-Every officer of the Government and every panch, sarpanch and other village officer of whatever description shall give immediate information to any officer of the Police or of any of the departments mentioned in section 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, panch, sarpanch and other village officer who neglects to give such information, shall be liable to punishment.

48. Power of attachment of crop illegally cultivated.-Any Metropolitan Magistrate, Judicial Magistrate of the first class or any Magistrate specially empowered in this behalf by the State Government 2[or any officer of a gazetted rank empowered under section 42] may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and while doing so may pass such order (including an order to destroy the crop) as he thinks fit.

49. Power to stop and search conveyance.-Any officer authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or

1. Ins. by Act 9 of 2001, sec. 20 (w.e.f. 2-10-2001).

2. Ins. by Act 2 of 1989, sec. 13 (w.e.f. 29-5-1989).

50A. Power to undertake controlled delivery.- The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to

- (a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.]