

NATIONAL JUDICIAL ACADEMY



REFRESHER COURSE FOR NDPS COURTS

Programme Report [P-1172]

Programme Coordinator

Mr. Prasidh Raj Singh, Faculty
National Judicial Academy, Bhopal

National Judicial Academy organized a three-day Refresher Course for NDPS Courts from 4-6th October 2019. The refresher course discussed various provisions of search and seizure, presumptions of culpable mental state, determination of drug quantity, reverse burden of proof, and forensic report in judicial proceedings. Identifying challenges and evolving solutions to effectuate qualitative justice delivery was one of the imperative objectives during the discussion. The refresher course was attended by 34 Justices presiding over the NDPS courts

The speaker initiated the discussion and gave a brief introduction about the NDPS Act and importance of law enforcement agencies while dealing with drug trafficking cases. It was emphasized upon that UN Drug Control Convention plays a substantial role in determining and regulating drug abuses. It was stressed that the determination of drug quantity involves many complex issues and close scrutiny is imperative before arriving at any conclusion. A reference was made to *E.Micheal Raj vs. Narcotic Control Bureau (2008) 5 SCC 161* where the court stated that; actual quantity should be taken into consideration and sentences are determined by weight of the active drug ingredient, not by whole substance. The speaker also highlighted 2009 notification specifying the small quantity and commercial quantity.

The speaker accentuated that search and seizure under the NDPS Act is a technical subject and attention to detail is required while dealing with the topic. A reference was made to section 41, 42, 43, and 50 of the Act. During the discussion topic like; search without a warrant, authorized person and search of government & private vehicle were discussed at length in consonance with the relevant provisions. A reference was made to various landmark cases such as; *Sk.Raju vs. State of West Bengal (2018) 9 SCC 708*, *Mohinder Singh vs. State of Punjab (2018) 18 SCC 540*, and *Arif Khan vs. the State of Uttarakhand (2018) 18 SCC 380*.

The speaker highlighted section 37 of the act and stressed that conditions to grant bail are subject to the limitation that has been given under sub. sec (1) of sec.37. It was accentuated that procedure and mandatory requirements as prescribed under the NDPS Act should be followed for accurate implementation of the Act. It was stressed that mandatory requirements under section 50 of the NDPS Act, if not followed then would raise serious objection upon the investigating authority. A

reference was made to *Satpal Singh vs. State of Punjab (2018) 13 SCC 813* and *Rizwan Ahmed vs. Directorate of Revenue Intelligence (2012) SCC Del. 1875*

The speaker further deliberated upon the reverse burden of proof and culpable mental state. A reference was made to similarly act where same provisions were incorporated. During the discussion appreciation of evidence and type of evidence such as; only reliable, either reliable or unreliable, and wholly unreliable were discussed at length. It was stressed that sample of the contraband must co-relate with the evidence and section 54 and 35 is not necessary to be applied simultaneously.

The speaker highlighted the importance of forensic reports in judicial proceedings. Three types of tools for investigation have been explained which are real-time intelligence, string operation, database of offenders. On the way of discussion different types of narcotics such as natural, synthetic, semi-synthetic, then the mode of admission of drugs was been elaborated. A reference was made to *Vijay Pandey vs. State of Uttar Pradesh (2019) SCC 942* where it was held that production of laboratory report of the tested samples of narcotics cannot be conclusive proof.

The speaker then discussed Section 32B, factors to be taken into account for imposing higher than the minimum punishment and stressed that in order to impose higher sentences, other factors besides the quantity are needed. It was stressed that section 32B alludes to additional factors that the Court may deem fit; and enumerated factors. The speaker further highlighted the sentencing provisions under the NDPS Act in cases of repeat offenders and the benefit of order on concurrent sentences.