

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL WRIT PETITION NO. 2077 OF 2021

Narcotics Control Bureau,
Mumbai Zonal Unit,
3rd Floor, Exchange Building,
SS Ram Gulam Marg, Ballard Estate,
Mumbai – 400 001
(Through Intelligence Officer,
K. Kiran Babu, NCB, Mumbai)
C.R. No. 16 of 2020

...Petitioner

Versus

1. Anuj Keshwani S/o Sanjay Keshwani,
Age – 30 years, R/o. Flat No. B-15,
B Wing, First Floor, U. P. Nagar Building,
Dr. Ambedkar Road, Behind Gulshan Dairy,
Khar (W), Mumbai – 52
(Presently lodged in Arthur Jail in
NCB C. R. No. 16 of 2020)

2. The State of Maharashtra

...Respondents

Mr. Anil C. Singh, ASG a/w Mr. Aditya Thakkar, Mr. Advait Sethna,
Mr. Shreeram Shirsat, Ms. Smita Thakur, Mr. Pranav Thacker and
Mr. Amandeep Singh Sra for the Petitioner

Mr. Rizwan Merchant a/w Mr. Taraq Sayed, Ms. Gayatri Gokhale and
Ms. Zainba Abdi for the Respondent No.1

Mr. S. S. Hulke, A.P.P for the Respondent No.2– State

CORAM : REVATI MOHITE DERE, J.
RESERVED ON : 3rd SEPTEMBER 2021
PRONOUNCED ON : 29th NOVEMBER 2021

JUDGMENT :

1 Heard learned Additional Solicitor General ('ASG') for the petitioner-Narcotics Control Bureau ('NCB'), and the learned counsel for the respondent No. 1.

2 Rule. Rule is made returnable forthwith at the request and with the consent of the parties and is take up for final disposal.

INTRODUCTION :

3 A very interesting and a crucial question, which will have a bearing in several Narcotic Drugs and Psychotropic Substances ('NDPS') cases, in which blotter paper containing Lysergic Acid Diethylamide ('LSD') is seized, has arisen in this petition i.e. whether the blotter paper forms an integral part of the LSD drug when put on a blotter paper for consumption ?

FACTS :

4 A few facts as are necessary to decide the aforesaid petition are as under :

 According to the prosecution, during the course of investigation of CR No.16/2020, registered with the NCB, a voluntary statement came to be recorded of one Kaizan Ebrahim. It is alleged that the accused - Kaizan Ebrahim disclosed the respondent No.1's name, as a receiver of *ganja/marijuana*. In the house search of respondent No.1 a total of 585 gms of *hashish/charas*; 270.12 gms of *marijuana/ganja*; 3.6 gms of THC; and 0.62 gms of LSD (31 blot papers) were allegedly recovered. The said contraband was seized under a panchanama by the petitioner-NCB on 6th September 2020. Pursuant thereto, the petitioner sent the recovered samples/contraband for examination to the Forensic Science Laboratory ('FSL'), Gujarat. After receipt of the report from the FSL, Gujarat and after completion of investigation, the NCB filed a complaint in the Special Court for NDPS, Mumbai. The respondent No.1-Anuj Keshwani preferred an application before the learned

Special Judge contending therein, that as per the charge-sheet and as per the FSL Report, the LSD contained in 31 blotter papers showed that it weighs 0.6200 gms, however, the FSL report was silent about the weight of the LSD drops, *sans* the blotter papers. It was further contended that the weight mentioned in the FSL report i.e. 0.6200 gms, included the weight of the blotter papers alongwith the LSD drops and that the weight of the blotter papers was required to be excluded. According to the respondent No.1, the weight of the blotter papers could not be taken into consideration for determining the LSD found on the same. The respondent No.1 in the said application prayed that the NCB officers be directed to send 'QSI' to the FSL for testing the weight of the purported LSD drug *sans* the blotter papers and file their report within a period of 15 days. The said application seeking retesting of LSD found on blotter papers was opposed by the petitioner – NCB. The learned Special Judge vide order dated 30th April 2021, after relying on an Order passed by this Court, in the case of *Hitesh Hemant Malhotra vs. State of Maharashtra*¹, allowed the respondent No. 1's

¹ Cri.BA/352/2020 decided on 07.12.2020

application (Exhibit 6 in NDPS Special Case No. 344/2021) and directed that the sample of 'QSI' be sent to the FSL, Gujarat, for ascertaining the weight of the purported LSD sans the blotting papers. Hence, this petition.

PETITIONER'S SUBMISSIONS :

5 The learned ASG submits that the LSD was a part and parcel of the blotter paper on which LSD was found and forms one component, inasmuch as, the blotter paper containing the LSD is also eaten/swallowed by the consumer. He submits that the blotter paper containing the LSD would constitute "preparation" of a psychotropic substance i.e. either a mixture or the substance in a dosage form. He submits that the learned Judge had clearly ignored and overlooked the judgment of the Apex Court in the case of *Hira Singh & Anr. vs. Union of India & Anr.*² as well as the Statement of Objects and Reasons behind enacting the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act'), including the Amendment Act No. 16 of 2014. Learned ASG also relied on the judgment of the **Supreme Court of United States** in the case of *Richard L. Chapman, John M. Schoenecker and Patrick*

2 2020 SCC OnLine SC 382

*Brumm vs. United States*³ which by a majority of 7:1 specifically held in the context of LSD, that the blotter paper though a carrier material, was a part of the mixture. Learned ASG also relied on the judgment of the Australian Court in the case of *Finch vs. The Queen*⁴, which also held that the blotter paper forms an integral part of the LSD drug. He submits that blotter paper, impregnated with LSD, is capable of being consumed by the consumer and as such, constitutes 'preparation' i.e. either a mixture or the substance in a dosage form. It is also submitted that even assuming that the blotter paper is a carrier material that, by itself, cannot mean, that it is not a part of the mixture, nor any neutral material. He submits that any interpretation contrary to the same, would not only be contrary to the provisions of the NDPS Act, but would also render nugatory, the intent and purpose of the NDPS Act. He submits that the order of this Court in the case of *Hitesh Malhotra (Supra)* is *per incuriam*, inasmuch as, the said order does not consider the relevant provisions of the NDPS Act, nor is there any finding or discussion on how LSD on a blotter paper does not constitute preparation. He further submits that even otherwise,

3 1991 SCC OnLine US SC 85

4 (2016) NSWCCA 133

the said order is contrary to the ratio laid down by the Apex Court in *Hira Singh (Supra)*, wherein, the Apex Court dealt with how drugs are consumed, and what would constitute a mixture or preparation. Learned ASG relied on the Orders of some High Courts in support of his submission to show that in cases relating to seizure of LSD on blotter paper, the Courts relying on *Hira Singh (Supra)*, have rejected the Bail applications of the accused therein. Learned ASG relied on the Orders in *Rijesh Ravindran vs Union of India*⁵ and *Datta Paratkar vs. State of Goa*⁶, in support of his submission.

6 Learned ASG also relied on the Convention on Psychotropic Substances of the United Nations to show that amongst the various countries, India, Australia and United States of America, are party to the said Convention, and as such the said judgments of the United States and Australia would also have some bearing to the facts in issue.

5 MANU/KA/4227/2020

6 2016 (1) Goa L.R. 16

RESPONDENT NO. 1'S SUBMISSIONS :

7 Mr. Merchant appearing for the respondent No. 1 submits that the judgment of the U.S. Supreme Court in the case of *Richard Chapman (supra)* will not apply to the facts of the present case, inasmuch as, the Scheme followed in the United States of America, for trial of a person charged for an offence under the Narcotic Drugs Act, is different from our NDPS Act. He submits that the laws in the United States governing the trial followed with the procedure of sentencing, **if convicted** under the United States Sentencing Commission Guidelines 1990, is completely different from the intention of the Legislature under our domestic law i.e. NDPS Act. He further submits that the interpretation of the term “mixture of substance” according to the U.S. Laws is not based on the statutory interpretation as provided for under the NDPS Act i.e. Section 2(x) and 2(xx), which define the term ‘manufacture’ and ‘preparation’. He submits that infact, the U. S. Supreme Court, in para 14 of the *Chapman's case (supra)* has observed that neither the Statute nor the Sentencing Guidelines define the terms ‘manufacture’ and ‘preparation’ nor have a common law meaning and therefore, these terms must be given their

ordinary meaning, whereas, the NDPS Act specifically defines the term 'manufacture' and 'preparation' giving meaning to the same, as reflected in the said two definitions. He submits that in *Chapman's case (supra)*, there are observations and contradictory findings with respect to the LSD contained in blotter papers, inasmuch as, on the one hand, it is observed in the said judgment that LSD when applied to a blotter paper in a solvent, is absorbed into the paper, ultimately evaporates, after which, the LSD is left behind in a form that can be said to mix with the paper and that the LSD crystals so left behind inside the paper, co-mingle with the paper, whereas, on the other hand, the learned Judges have also observed that LSD does not chemically combine with the paper and it retains its separate existence and can be released by dropping the blotter paper in a liquid or by licking it. It is also observed that the LSD on blotter papers gets defused amongst the fibre of the papers and it cannot be distinguished from the blotter paper nor can be easily separated from it. He submits that in view of the contradictory findings in *Chapman's case (supra)*, the appropriate course would be to follow the NDPS Act, in particular, the note provided under the Statute at the foot of the table

introduced under the NDPS Act, vide Standing Order 1005(E) dated 19th October 2001 by which the Central Government has specified in the table, the quantities of various narcotic drugs and psychotropic substances which fall within the term “small quantity” and “commercial quantity”. He submits that at the end of the said note at item No. 4, an amendment is inserted, as item No. 4 vide Standing Order 2941(E) dated 18th November 2009. He submits that the said amendment inserted by the Standing Order dated 18th November 2009 provides greater clarity than the observations of the U.S. Supreme Court and hence, it would be just, fair and reasonable to follow the provisions of the NDPS Act, rather than apply the ratio of the judgment, which reflects a certain degree of ambiguity. Mr. Merchant further submits that *Chapman's case (supra)* reflects some ambiguity in paragraph 21 of the said judgment, where the Court has observed that LSD is not sold by weight but by dose and the “carrier medium” is not strictly used to dilute the drug and instead, the carrier medium is used to facilitate the distribution of the drug and that blotter paper makes LSD easier to transfer, store, conceal and sell the said drug.

8 Mr. Merchant submits that the U.S. Supreme Court has observed

that the blotter paper, as a carrier medium, is used as a tool of the trade for those who traffic in the said drug and that the blotter paper seems to be the “carrier in choice” and that the vast number of cases will therefore do exactly what the “Sentencing Scheme” was designed to do i.e. to punish more heavily, those, who deal in larger amount of drugs.

9 Mr. Merchant further submits that a perusal of the Standing Order dated 18th November 2019 provides that the quantity is shown in Columns 5 and 6 of the table i.e. “small quantity” and “commercial quantity” relating to the respective drug shown in column 2 and applies to the entire “mixture” or any solution or any one or more narcotic drugs or psychotropic substance of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including the salts of esters, ethers and isomers “wherever existence of such substance is possible and not just its pure drug content.” He thus submits that the term "preparation" would not only include those substances which are included in column 2 of the table, but even a mixture of narcotic drugs and psychotropic substances as appearing in column 2 of the

table. He submits that there could be a case where the LSD with the blotter paper is not swallowed, but the blotter paper is only used as a medium of consumption i.e. by licking it, thus allowing the LSD to be absorbed on the tongue and thereafter, by discarding the blotter paper. Thus, according to Mr. Merchant, LSD on a blotter paper is not only capable of being confined to swallowing, but is also capable of being separated from the drug by either licking it or dipping it in liquid for consumption, and as such, it becomes all the more imperative that the exact contents of the pure LSD drug is known, so as to facilitate the application of the provisions of Section 21 of the NDPS Act, *qua* small quantity, intermediate quantity or commercial quantity. He, therefore, submits that only one mode of consumption of LSD i.e. by swallowing the blotter paper, cannot be taken into account and hence, the weight of the blotter paper would have to be excluded from consideration.

10 He further submits that the judgment of the Court of Appeal for New South Wales in *Finch (supra)* would also not apply to the facts of the present case, inasmuch as, there was identification of LSD both, in cardboard

tabs and in liquid and that there was actual evidence to show that the cardboard tabs were swallowed, which is amiss, in the present case. He further submits that in the present case, it is not the prosecution case that blotter papers are swallowed as a matter of course, and that this is the only mode of consumption. He submits that in the case of *Finch (supra)*, there was evidence of consumption by a user of swallowing the cardboard tabs and that the same was recorded before the trial Court and consequently, the Court arrived at a finding that the cardboard impregnated with LSD was an integral part of the ingestion by the user of the drug and thus, "preparation" of a substance within the meaning of Section 4 of the Drugs Misuse and Trafficking Act 1985. He submits that in the present case, the charge-sheet does not show a single witness claiming to have consumed LSD on a blotter paper by swallowing the same and as such, in the present case, the blotter paper and the weight thereof, cannot be and should not be treated as an integral part of "preparation" of psychotropic substance i.e. LSD. He submits that merely because India is a party to the Convention on Psychotropic Substances of the United Nations, alongwith the other countries including USA and Australia,

does not mean that the Courts are bound by the judgments of the said Courts.

11 Mr. Merchant further submits that although the learned ASG appearing in the Apex Court in *Hira Singh's case (supra)*, had relied on *Chapman's case (supra)*, the Apex Court in *Hira Singh (supra)* had not relied on *Chapman's case (supra)*, much less, made any observation or reference to the said judgment, whilst deciding *Hira Singh's case (supra)*. Mr. Merchant, learned counsel for the respondent No. 1 relied on two judgments of this Court in the case of *Hitesh Malhotra (supra)* and *Harsh Sharad Meshram vs State of Maharashtra*⁷. He submits that in both these orders, this Court has distinguished *Hira Singh (supra)* and has categorically held that LSD blotter paper merely carries the drug and facilitates its consumption and that the paper with LSD drops, as a whole, is neither "preparation" nor a "mixture" within the meaning of the NDPS Act and that *Hira Singh (supra)* will not apply, as the the paper containing LSD solution is not a mixture and the blotter paper is not a neutral substance. Mr. Merchant submits that *Hira Singh (supra)* will not apply to a LSD drug (adulterated or diluted) contained

⁷ Cri.BA/1671/2021 decided on 13.05.2021

on a blotter paper, as LSD contained on a blotter paper is neither a mixture, nor a substance in a dosage form. He submits that the Karnataka High Court in *Rijesh Ravindran (supra)* whilst dealing with a case relating to LSD, has not discussed the method of testing LSD found on a blotter paper and/or whether it amounts to a mixture or not or whether it constitutes a preparation and therefore, no reliance can be placed on the said order.

12 Mr. Merchant submits that in order to frame appropriate charges under Section 21 of the NDPS Act, it is necessary for the trial Court to know whether the quantity is small quantity, intermediate or commercial quantity and that, it is only the FSL report which would facilitate the purpose and objective of the Standing Orders issued by the Central Government. He submits that the FSL report should also be in consonance with the Standing Order 1055 (E) dated 19th October 2001 and the Standing Order 2941 (E) dated 18th November 2009, by which point No. 4 has been added in the note, at the foot of the table. He submits that it was the duty of the FSL to record in the FSL report the existence of substances such as isomers, esters, ethers and

salts of the narcotic drugs or psychotropic substance as listed in columns 2 to 4, so also, the qualitative analysis of that particular mixture or substance or any solution of any one or more such narcotic drug or psychotropic substance of that particular drug in dosage form or its isomers, ethers, etc. as listed in columns 2 to 4. He submits that it is necessary to permit the FSL to conduct quantitative and qualitative analysis of the substance. He submits that the purpose of such quantification analysis is not to cause the identification or purity of only the drug content in the sample, but also to identify which are those salts, esters, isomers, ethers and neutral substance which are mixed with the contraband in its pure form to become that dosage form, which has been trafficked by the accused in the illicit market. He submits that the dosage form means the pure drug together with its isomers, ethers, etc. and the quantification thereof, will determine whether the accused deserves to be charged for small quantity or intermediate or commercial quantity. He submits that in the present case, it was the duty of the NCB to call for, and, the FSL to provide and show the existence of the LSD on the blotter paper, which was neither done by the NCB nor provided by the FSL. According to Mr.

Merchant, the same appears to have been done deliberately and willfully to show that the alleged seizure of LSD from the respondent No. 1 falls well within the ambit of Section 21(c) of the NDPS Act i.e. for commercial quantity. He submits that in the present case, more than 30 accused have been arrested and that save and except the present respondent No. 1, all the accused have been charged with small quantity, pursuant to the contraband recovered from each of them. He submits that on the basis of the recovery at the instance of the respondent No. 1, the NCB intends to show that the case relates to commercial quantity, by intentionally calculating the weight of the LSD, with the blotter paper. He submits that the weight of the blotter paper allegedly containing LSD, seized at the instance of the respondent No. 1 is around 0.62 gms, and as such, is above commercial quantity (the commercial quantity of LSD being 0.1 gm as mentioned in Serial No. 133 of the table appended to the Act). He submits that the prosecution, by taking the weight of the blotter paper allegedly containing LSD, is trying to bring in its ambit, a case of commercial quantity so as to apply charges under Sections 27(A) and 29 of the NDPS Act, to the case in hand. He submits that the respondent No. 1 by

seeking further test i.e. seeking segregation of LSD from the blotter paper, is himself taking a calculated risk, inasmuch as, if the fresh FSL report quantifies the weight of the LSD in the seized blotter papers as commercial quantity, the respondent No. 1 would have to necessarily face the consequence of having been found in possession of commercial quantity of LSD and consequently, the bar of Section 37 of the NDPS Act will apply. He submits that no prejudice would be caused to the prosecution if such an exercise is undertaken i.e. of sending the blotter papers allegedly containing LSD for fresh analysis for weighing the LSD *sans* the blotter papers. He submits that a similar exercise i.e. giving quantity of LSD and blotter paper separately, is done by other Forensic Science Labs, in more than one cases and as such there is no reason why the same process or exercise cannot be followed by the NCB, as done by other agencies like the State Police (Anti-Narcotic Cell). Learned counsel relied on a copy of a report of the FSL at Kalina, wherein, the quantification of the contents of the LSD in the blotter paper, was separately recorded.

13 Mr. Merchant further submits that another reason for calling for

a fresh analysis report, both, qualitative and quantitative is, that though the seizure panchanama shows that 32 blotter papers and 10 strips of papers purportedly containing LSD were seized i.e. a total of 42 blotter papers weighing 0.62 gms, however, the FSL report shows that what was sent to the FSL were 31 blotter papers and the weight of LSD with the 31 blotter papers was also stated to be 0.62 gms. He submits that what happened to the 10 strips of papers containing LSD, is not known. He further submits that it is impossible that the weight of 32 blotter papers together with the 10 strips allegedly containing LSD (0.62 gms) is the same, as disclosed in the FSL report to whom only 31 blotter papers were sent i.e. 0.62 gms. He submits that the same is highly improbable and that there is no explanation forthcoming from the NCB with respect to the said discrepancy. He further submits that neither is there any mention in the FSL report, as to whether each of the 31 blotter papers were subjected to an individual test, before concluding that the 31 blotter papers contained LSD. He submits that the seizure panchanama also shows failure on the part of the Investigating Officer, NCB to conduct a test, with a Field Testing Kit, on one or more of the different size blotter papers so seized,

before arriving at a conclusion or before having reason to believe, that all the blotter papers contained drops of LSD. He submits that no testing was done with the Field Testing Kit on one or any of the blotter papers to strengthen and fortify the conclusion of finding of LSD, so as to reasonably believe, that the blotter papers carried LSD. He submits that the aforesaid discrepancies warrant sending the blotter papers for re-testing, for conducting an analysis, by separating the LSD from the 31 blotter papers of different sizes.

DISCUSSION :

14 Perused the papers. As noted above, the short question posed for consideration in the present petition is, whether the blotter paper forms an integral part of the LSD Drug when put on a blotter paper for consumption ?

15 At the outset, it is important to understand what is LSD? LSD was first synthesized in 1938, in Basel, Switzerland, while looking for a blood stimulant. It is an extremely potent hallucinogen. It is synthetically made from lysergic acid, which is found in ergot, a fungus that is grown on rye and

other grains. It is so potent that its doses tend to be in microgram (mcg) range. Its effects, often called a 'trip' can be stimulating, pleasurable and mind altering or it can lead to an unpleasant, sometimes terrifying experience called 'a bad trip'. A common/street names for LSD are acid, battery acid, doses, dots, trips, yellow, windowpane, tab, as well as names that reflect the design on sheets of blotter paper. In USA, LSD is illegal and is classified by the Drug Enforcement Agency (DEA) as a Schedule 1 drug, which shows that LSD has a high potential for abuse. LSD is often added to absorbent paper, such as 'blotter paper'. The paper can be divided into small squares, 'tabs' with each square representing one dose called a 'hit'. Unlike toilet paper or even tissue paper, blotter paper appears to be made out of an extra-absorbent material and generally includes ingredients such as rice, cotton and even flax seed. It is impossible to visually identify the strength or type of drug when buying.

16 Drug active in microgram range, most notably 'LSD', is commonly distributed illicitly on blotter paper. A liquid solution of the drug is applied to the blotter paper, which commonly is perforated into individual

doses. Blotter as a delivery method allows for easy dosing of potent substances and easy sublingual administration of drugs.

17 Hallucinogenic drugs, such as LSD, cause a person to see vivid images, 'hear' sounds and 'feel' sensation that seem real but are not. LSD is most widely used Hallucinogenic drug. LSD is also called acid, blotter or dots. It is odorless and colorless and has a slightly bitter taste. It is one of the most powerful mood-changing chemicals. As noted aforesaid, the other term for LSD sold on the streets is also tablets, acid, doses, etc. LSD is sold on the streets in powder, tablets, capsules or in liquid form. LSD is often added to absorbent paper, such as blotter paper. As noted above, the paper is divided into small decorated squares (or tabs) with each square representing one dose called a 'hit'. LSD can also be found in thin squares of gelatin. LSD is taken by mouth and swallowed or also licked off blotter paper.

18 Albert Hofmann (11th January 1906 - 29th April 2008) was a Swiss Scientist who was the first person to synthesize, ingest and learn of the

psychedelic effects of LSD, a drug which came to be synonymous with the 50's and 60's beatnik and 50th generation, including in the USA and worldwide. Initially, LSD was legal in USA until it became illegal in California in 1966, after which other states and countries soon followed. It appears that the standard dose of LSD appears to be somewhere around 30–150 microgram (mcg). A single 'hit' on a blotter paper contains somewhere LSD in this range. Without chemical testing, it's impossible to know how much LSD is there on the blotter paper.

19 The United Nations Convention on Psychotropic Substances adopted in 1971, requires the signing parties (countries) to prohibit LSD. Hence, all countries who are parties to the said Convention, including USA, Australia, New Zealand and most of Europe as well as India, LSD is illegal.

20 Research shows that LSD when consumed is quickly absorbed from the stomach and intestines and effects are experienced approximately within 30 to 60 minutes. The physical effects of LSD include dilated pupils, higher body temperature, increased heart rate and blood pressure, sweating,

loss of appetite, sleeplessness, dry mouth and tremors. It appears that within an hour of ingestion of LSD, psychic effects occur which causes a distortion in sensory perception. Although, all body's senses are affected by LSD, what is affected the most, is vision. It appears that the sensor input of an LSD user can become so distorted, that they may 'see' music or 'hear' color. LSD users can experience or exhibit dramatic mood swings or extreme happiness to deep depression. If it is a 'bad trip', it can result in acute panic reactions and users feel they are in extreme danger. These scary sensations may last a few minutes or several hours. The user may experience confusion, anxiety, panic, attacks, delusions, impaired time perception, distorted perception of the size and shape of objects, movements, color, sounds and touch, visual hallucinations, suspiciousness, a feeling of helplessness, a loss of control, etc. Large dose of LSD may even produce convulsion and coma, as well as heart and lung failure. The psychological side effects apart from physical side effects commonly associated with an LSD trip is synesthesia or sensory distortion; hallucinations or distortions to the way you see things around you; paranoia, euphoria etc.

21 Thus, it is evident from the aforesaid, that LSD or Acid as it is

commonly known, is a potent, long-lasting psychoactive substance.

22 It would now be apposite to advert to, and highlight the various judgments/orders passed by various Courts including the judgment of the Apex Court in *Hira Singh (supra)*, whilst considering the question posed before this Court.

23 Learned ASG placed reliance on the judgment of the U.S. Supreme Court in the case of *Richard Chapman (supra)* and the judgment of the Court of Appeal for New South Wales in *Finch (supra)*, in support of his submission, that the weight of the blotter paper containing LSD is to be taken into consideration and not only the weight of the pure LSD. The U.S. Supreme Court in *Chapman's case (supra)*, was called upon to decide a case where a mandatory minimum sentence of 5 years for the offence of distributing more than 1 gm of a “mixture or substance containing a detectable amount of LSD”. The U.S. Supreme Court in the said case held that it is the weight of the blotter paper containing LSD, and not the weight of the pure LSD, which determines the eligibility for the minimum sentence. In the said

case, three persons were convicted for selling 10 sheets (thousand doses) of blotter papers containing LSD, in violation of Section 841(a) of Title 21 of the United States Code (‘U.S.C’) and were sentenced to a mandatory minimum sentence of 5 years required by 21 U.S.C [Section 841(b)(1)(B)(v)] for distributing more than one gram of a mixture or substance containing a detectable amount of LSD. The entire 5.7 gms was also used to determine the base offence level under the United States Sentencing Commission Guidelines Manual 1990. The petitioner before the U.S. Supreme Court argued that the blotter paper was only a carrier medium and that its weight should not be included in the weight of the drug for sentencing an accused. Alternatively, they argued that if the Statute and Sentencing Guidelines were construed so as to require inclusion of the blotter paper or other carrier medium when calculating the weight of the drug, this would violate the right to equal protection incorporated in the Due Process Clause of the Fifth Amendment. The Court of Appeals for the Seventh Circuit held that the weight of the blotter paper or other carrier should be included in the weight of the “mixture or substance containing the detectable amount” of LSD. Under Section 841

(b)(1)(A)(v), a mandatory minimum sentence of 10 years imprisonment is provided for violation of sub-section (a) involving 10 grams or more of a mixture or substance containing a detectable amount of LSD. According to the Sentencing Commission, the LSD in an average dose, weighs 0.05 milligrams and that there are, therefore, 20,000 pure doses in a gram. The pure dose is such an infinitesimal amount that it must be sold to retail customers in a “carrier”. It was observed that pure LSD is dissolved in a solvent such as alcohol and either the solution is sprayed on paper or gelatin, or paper is dipped in the solution; that the solvent evaporates, leaving minute amounts of LSD trapped in the paper or gel; then the paper or gel is cut into “one-dose” squares and sold by the dose; users either swallow the squares, lick them until the drug is released, or drop them into a beverage, thereby releasing the drug; that although gelatin and paper are light, they weigh much more than the LSD. It was argued by the accused therein; (i) that the weight of the carrier should not be included when computing the appropriate sentence for LSD distribution, for the words “mixture or substance”, were ambiguous, and should not be construed to reach an illogical result; (ii) because LSD is sold by

dose, rather than by weight, the weight of the LSD carrier should not be included when determining the accused's sentence because it is irrelevant to culpability; (iii) that including the weight of the carrier may lead to anomalous results, for example, a major wholesaler caught with 19,999 doses of pure LSD would not be subject to the 5-year mandatory minimum sentence, while a minor pusher with 200 doses on blotter paper, or even one dose in a sugar cube, would be subject to the mandatory minimum sentence; (iv) that the weight of the carrier should be excluded and the weight of the pure LSD should be determined; and (v) that only the weight of the LSD should be used to set the appropriate sentence. The U.S. Supreme Court observed that the Statute referred to a "mixture or substance containing a detectable amount" and that as long as it contains a detectable amount, the entire mixture or substance is to be weighed when calculating the sentence. In paras 14 and 15 of *Chapman's case (supra)*, it is observed as under:

"14. We think that the blotter paper used in this case, and blotter paper customarily used to distribute LSD, is a "mixture or substance containing a detectable amount" of LSD. In so holding, we confirm the unanimous conclusion of the Courts of

Appeals that have addressed the issue. Neither the statute nor the Sentencing Guidelines define the terms "mixture" and "substance," nor do they have any established common law meaning. Those terms, therefore, must be given their ordinary meaning. See Moskal v. United States, 498 U. S. 103, 498 U. S. 108 (1990). A "mixture" is defined to include a portion of matter consisting of two or more components that do not bear a fixed proportion to one another and that, however thoroughly commingled, are regarded as retaining a separate existence." Webster's Third New International Dictionary 1449 (1986). A "mixture" may also consist of two substances blended together so that the particles of one are diffused among the particles of the other. 9 Oxford English Dictionary 921 (2d ed.1989). LSD is applied to blotter paper in a solvent, which is absorbed into the paper and ultimately evaporates. After the solvent evaporates, the LSD is left behind in a form that can be said to "mix" with the paper. The LSD crystals are inside of the paper, so that they are commingled with it, but the LSD does not chemically combine with the paper. Thus, it retains a separate existence and can be released by dropping the paper into a liquid, or by swallowing the paper itself. The LSD is diffused among the fibres of the paper. Like heroin or cocaine mixed with cutting agents, the LSD cannot be distinguished from the blotter paper, nor easily separated from it. Like cutting agents used with other drugs that are ingested, the blotter paper, gel, or sugar cube carrying LSD can be and often is ingested with the drug.

15. *Petitioner argues that the terms "mixture" or "substance"*

cannot be given their dictionary meaning, because then the clause could be interpreted to include carriers like a glass vial or an automobile in which the drugs are being transported, thus making the phrase nonsensical. But such nonsense is not the necessary result of giving the term "mixture" its dictionary meaning. The term does not include LSD in a bottle, or LSD in a car, because the drug is easily distinguished from, and separated from, such a "container." The drug is clearly not mixed with a glass vial or automobile; nor has the drug chemically bonded with the vial or car. It may be true that the weights of containers and packaging materials generally are not included in determining a sentence for drug distribution, but that is because those items are also clearly not mixed or otherwise combined with the drug."

24 The US Supreme Court further observed with respect to LSD, that, although LSD is not sold by weight, but by dose, and that a carrier medium is not, strictly speaking, used to "dilute" the drug, that medium is used to facilitate the distribution of the drug. It was further observed that the blotter paper makes LSD easier to transport, store, conceal, and sell and that, it is a tool of the trade for those who traffic in the drug, and therefore, it was rational to set penalties based on such chosen tool. It is further observed that while hypothetical cases can be imagined involving very heavy carriers and very

little LSD, however, those cases are of no import in considering a claim by persons such as the accused, who have used the standard LSD carrier and that the blotter paper appears to be the carrier of choice, and the vast majority of cases will therefore do exactly what the Sentencing Scheme was designed to do – punish more heavily those who deal in larger amounts of drugs.

25 Similarly, the Court of Appeal for New South Wales in *Finch (supra)*, was called upon to consider whether the conviction of the appellant therein was justified. One of the grounds raised by the accused therein, was that neither the cardboard nor the liquid containing the LSD should have been included in the overall weight of the LSD. The Court, whilst considering the said ground, in para 117, considered the Section which provides for “Admixtures”. The Court, after considering the word substance and the evidence that had come on record to show that the cardboard containing LSD was swallowed, observed, that the evidence disclosed that the cardboard squares were ingested with LSD, and, that there was evidence about the ingestion of cardboard tabs by end users, and as such, held that the cardboard impregnated with LSD clearly was a “preparation” or an other substance within the

meaning of Section 4 of DMT. It was further observed that having regard to the evidence that users take the drug by ingesting the cardboard with LSD, it is clear that the cardboard is an “other substance containing proportion of the prohibited drug” and the weight of the cardboard is to be included in calculating the relevant weight for the purposes of the traffickable and large commercial thresholds contained in the DMT Act. It was urged before the said Court that the evidence of how LSD was taken by a user was different from the evidence in the case therein i.e. the LSD in that form was ingested by placing a cardboard tab under the tongue and once the LSD had been ingested, the cardboard was spat out. In these circumstances, it was submitted that the cardboard tab was analogous to a syringe or other delivery mechanism and could not be taken into account in calculating the weight of an 'admixture' as defined under the DMT Act. The Court of Appeal for New South Wales further observed in para 142 of the judgment as under:

“142. On the evidence here, the cardboard was designed to be swallowed and, accordingly, the cardboard impregnated with LSD was ingested by a user. The cardboard was not analogous to a container or syringe from which the user extracted a drug.

A much closer analogy would be the non-drug content of a film coating or a gelatin capsule used in the production of lawful drugs in the way described by the full Federal Court in Sigma Pharmaceuticals (Australia) Pty. Ltd. vs. Wyeth (2011) 119 IPR 194. That film coating or gelatin capsule is an integral part of the ingestion by the user of the drug. In the same way, here, the cardboard impregnated with LSD was an integral part of the ingestion by the user of the drug and thus, a “preparation” or a “substance” within the meaning of Section 4.”

26 No doubt, in *Hira Singh's case (supra)*, the learned Additional Solicitor General of India had relied on *Richard Chapman's case (supra)*, in support of his submission, that the quantity of the neutral substance is not to be excluded, and, is infact, to be taken into consideration alongwith the actual content of the weight of the offending drug, however, there is no reference to *Chapman's judgment (supra)*, whilst answering the reference. It is pertinent to note, that the Apex Court in *Hira Singh (supra)*, was called upon to consider five questions, as the view taken in the case of *E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau*⁸, was not agreed upon, that when any narcotic drug or psychotropic substance is found mixed with one or

8 (2008) 5 SCC 161

more neutral substance/s, for the purpose of imposition of punishment, it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration. Accordingly, the following questions were referred to the three Judge Bench :

“(a) Whether the decision of this Court in E. Micheal Raj (supra) requires reconsideration having omitted to take note of entry no. 239 and Note 2 (two) of the notification dated 19.10.2001 as also the interplay of the other provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) with Section 21?

(b) Does the impugned notification issued by the Central Government entail in redefining the parameters for constituting an offence and more particularly for awarding punishment?

(c) Does the NDPS Act permit the Central Government to resort to such dispensation?

(d) Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug?

(e) Whether Section 21 of the NDPS Act is a stand along provision or intrinsically linked to the other provisions dealing with “manufactured drug” and “preparation” containing any manufactured drug?”

(Emphasis supplied)

27 The Apex Court, after considering the object and the legislative intent behind enacting the NDPS Act and the Amendment Act No. 16 of 2014, observed that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of the offending drug, for the purpose of deciding whether it should constitute small quantity or commercial quantity. The discussion with respect to the same is elucidated from paras 8.2 to 8.5 in *Hira Singh (supra)* and the same is reproduced hereinunder:

“8.2 Therefore, considering the statement of objects and reasons and the preamble of the NDPS Act and the relevant provisions of the NDPS Act, it seems that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. Right from sub-clause (viiia) and (xxiiiia) of Section 2 of NDPS Act emphasis is on Narcotic and Drug or Psychotropic Substance (Sections 21, 22, 23, 24, 27 and 43). Even in the table attached to the Notification dated 19.10.2001, column no. 2 is with respect to name of Narcotic Drug and Psychotropic Substance and column nos. 5 and 6 are with respect to “small quantity and commercial quantity”. Note 2 of the Notification dated 19.10.2001 specifically provides that quantity shown against the respective

drugs listed in the table also apply to the preparations of the drug and the preparations of substances of note 1. As per Note 1, the small quantity and commercial quantity given against the respective drugs listed in the table apply to isomers ..., whenever existence of such substance is possible. Therefore, for the determination of “small quantity or the commercial quantity” with respect to Narcotic Drugs and Psychotropic Substance mentioned in column no.2 the quantity mentioned in the clauses 5 and 6 are required to be taken into consideration. However, in the case of mixture of the narcotic drugs / psychotropic drugs mentioned in column no.2 and any mixture or preparation that of with or without the neutral material of any of the drugs mentioned in table, lesser of the small quantity between the quantities given against the respective Narcotic Drugs or Psychotropic Substances forming part of mixture and lesser of commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substance forming part of the mixture is to be taken into consideration. As per example, mixture of 100 gm is seized and the mixture is consisting of two different Narcotic Drugs and Psychotropic Substance with neutral material, one drug is heroin and another is methadone, lesser of commercial quantity between the quantities given against the aforesaid two respective Narcotic Drugs and Psychotropic Substance is required to be considered. For the purpose of determination of the “small quantity or commercial quantity”, in case of entry 239 the entire weight of the mixture / drug by whatever named called weight of neutral material is also required to be considered subject to what is stated hereinabove. If the view taken by this Court in the case

of E. Micheal Raj (Supra) is accepted, in that case, it would be adding something to the relevant provisions of the statute which is not there and/or it was never intended by the legislature.

*8.3 At this stage, it is required to be noted that illicit drugs are seldom sold in a pure form. They are almost always adulterated or cut with other substance. Caffeine is mixed with heroin, it causes that heroin to vaporize at a lower rate. That could allow users to take the drug faster and get a big punch sooner. Aspirin, crushed tablets, they could have enough powder to amend reversal doses of drugs. Take example of heroin. It is known as powerful and illegal street drug and opiate derived from morphine. This drug can easily be “cut” with a variety of different substances. This means that drug dealer will add other drugs or non -intoxicating substances to the drug so that they can sell more of it at a lesser expense to themselves. Brown-sugar / smack is usually made available in power form. The substances is only about 20% heroin. The heroin is mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous. These are only few examples to show and demonstrate that even mixture of narcotic drugs or psychotropic substance is more dangerous. **Therefore, what is harmful or injurious is the entire mixture/tablets with neutral substance and Narcotic Drugs or Psychotropic Substances. Therefore, if it is accepted that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of NDPS Act would be frustrated.***

There may be few punishment for “commercial quantity”. Certainly that would not have been the intention of the legislature.

*8.4. Even considering the definition of “manufacture”, “manufactured drug” and the “preparation” conjointly, the total weight of such “manufactured drug” or “preparation”, including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of **NDPS Act** would be achieved. Any other intention to defeat the object and purpose of enactment of **NDPS Act** viz. to Act is deterrent.*

*8.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the **Opium Act, 1857**. **The Opium Act, 1875** and the **Dangerous Drugs Act, 1930**. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of **NDPS Act**. As observed herein above, the Act is a special law and has a laudable purpose*

to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted”.

(Emphasis supplied).

28 The Apex Court, accordingly answered the reference in Para 10 of the said Judgment, as under :

“10. In view of the above and for the reasons stated above, Reference is answered as under:

(I) The decision of this Court in the case of E. Micheal Raj

(Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II) In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances;

(III) Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

(IV) Challenge to Notification dated 18.11.2009 adding “Note 4” to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.”

(Emphasis supplied)

29 Although, the drug which was considered by the Apex Court in *Hira Singh (supra)* was “heroin”, the principle underlying the said conclusion will have to be considered and borne in mind. Infact, the submissions advanced by the learned Counsel for the Respondent No.1 with respect to 'Note 4' in the Notification dated 18/11/2009 and the Standing Order dated 19/10/2001, have been dealt with by the Apex Court in *Hira Singh (supra)* and, hence need not be adverted to again.

30 LSD put on a blotter paper, is capable of being swallowed, after placing it on the tongue. It is thus evident that the blotter paper is capable of being swallowed and is used as one of the methods for consuming LSD. Merely because the said blotter paper can be licked or put in a glass of water, does not necessarily mean that the blotter paper has to be excluded whilst determining the LSD on the blotter paper. Take for example, a capsule containing a drug or a psychotropic substance. The said capsule is capable of being opened and its contents, can either be consumed directly or added to any other mixture/swallowed with the cover. The fact remains that if a drug is put

in a capsule, the same will have to be weighed as a whole. It is important to bear in mind the legislative intent, the object and reasons, and, the preamble of the NDPS Act, whilst considering, whether LSD is to be weighed *sans* the blotter paper. As noted in *Hira Singh (supra)*, it was never the intention of the legislature to exclude the quantity of the neutral substance and to consider only the actual content by weight of the offending drug. It is also pertinent to note that illicit drugs are seldom sold in a pure form. They are always adulterated or cut with other substance or put in a gelatin or blotter paper, as in the present case. Heroin, for example, is capable of being mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous. The blotter paper impregnated or ingested with LSD is, in a sense, a dose. The blotter paper is made out of an extra-absorbent material and generally includes ingredients such as rice, cotton and even flax seed, thus, making it edible and as such, a substance in a dosage form/a mixture for consumption. It is thus evident, that a blotter paper, a carrier material, ingested with LSD, forms an integral part of the ingestion by the user of the drug and thus, constitutes preparation of the

psychotropic substance i.e. LSD, which is capable of being consumed, and as such, forms a substance in a dosage form or a mixture. Infact, at the first blush, one may ask 'how paper' ?, but once it is accepted that a blotter paper ingested/impregnated with LSD, is used as a medium of consumption, the same will squarely fall within the definition of the term 'preparation', as defined in Section 2 (xx) of the NDPS Act. Like cutting agents used with other drugs that are ingested, the blotter paper, gelatine capsules or sugar cubes carrying LSD can be and often is ingested with the said drug. The object of the NDPS Act is to deal with the street weight of the drug in the diluted form in which they are sold and not only the weight of the active component. Thus, having regard to the dictum of the Apex Court in *Hira Singh (supra)*, and the legislative intent of the NDPS Act, the blotter paper impregnated or ingested with LSD will have to be considered as a whole, whilst determining whether the quantity is a small or commercial quantity.

31 In *Rijesh Ravindran (supra)*, the Karnataka High Court, whilst considering the bail application of the accused therein, relying on the judgment of the Apex Court in *Hira Singh (supra)* took into consideration

the 180 blots of LSD seized from the possession of the accused therein and found that the same was commercial quantity.

32 It is pertinent to note, that the Order impugned in this Petition, has been passed relying on the Order passed by this Court in ***Hitesh Malhotra (supra)***. This Court, in ***Hitesh Malhotra (supra)***, whilst considering the bail application of the applicant therein, considered only the weight of the LSD drug *sans* the blotter paper. In the said case, the FSL report had given quantitative findings with respect to the LSD found on the blotter paper as well as the weight on the blotter papers. In the said case, LSD was found in the form of drops, dried on 23 pieces of papers. The total weight of 10 pieces of papers containing LSD drops found on the person of the accused was 140 milligrams, however, 13 pieces of papers containing drops of LSD solution allegedly found and recovered from the applicant's house, the weight on the same was not disclosed in the panchanama nor found in the charge-sheet, however, the Chemical Analyser's report showed that the net weight of the drops of the LSD solution found on the 23 papers was 0.4128 milligram, which is less than the commercial quantity i.e. 0.1 gm. This Court after

considering the judgment of the Apex Court in the case of *Hira Singh (supra)*, observed in paras 8 and 9, 9 as under:

“8. I have perused the First Information Report, Recovery Panchanamas and Chemical Analyser’s report. At the outset, it may be stated that the most common form of LSD is drop of LSD solution dried onto piece of paper or gelatin sheet, pieces of blotting papers which releases the drop when swallowed/consumed. In this case, drug was found in the form of drops dried onto 23 pieces of papers. Thus, process of drying LSD solution on a piece of paper, merely facilitates consumption of drug. This process neither changes the substance of the drug or its chemical composition. It is argued by the State, that since dried LSD drops of LSD solution, cannot be segregated or separated from the papers, it amounts to a ‘mixture’ and therefore the weight of the paper is to be counted with ‘LSD dots’ for determining the quantity of drug which was more than 0.1 gram. The learned APP relies on Entry-239 of the Table and Footnote-(4) appended thereto of the NDPS Act. Entry No.239 and Footnote-(4) reads as under :

239. Any mixture or preparation that of with or without a neutral material, of any of the above drugs.

Lesser of the Small quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture.

Lesser of the Commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture.”

“4. The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.”

9. In my view, though after swallowing piece of paper, which causes release of drug but since that paper only carries drug and facilitates its consumption, the paper with LSD drops, as a whole, is neither “preparation”, within the meaning of Section 2(xx), nor a “mixture” within the meaning of of the NDPS Act. So far as the judgment of the Hon’ble Apex Court in the case of Hira Singh (supra) is concerned, issue therein was, whether mixture of narcotic drug or psychotropic substances with one or more neutral substances, quantity of neutral substances can be excluded while determining the small or commercial quantity of narcotic drug and psychotropic substances. However herein, the papers containing dried LSD drops of LSD solution, not being a mixture, and the paper being not a neutral substance, judgment

of the Apex Court, has no application to the facts of this case.

9. The learned Judge, as it appears from the impugned order, has accounted weight of papers “while calculating and determining quantity of the LSD as a “commercial quantity”. In addition, while holding quantity of charas recovered from the applicant was ‘commercial quantity’, is equally incorrect because charas allegedly recovered from the applicant was 970 gms i.e. less than 1 kg.”

33 This Court observed that the trial Court had, whilst rejecting the bail application of the accused therein, accounted for the weight of papers while calculating and determining the quantity of the LSD as commercial quantity. This Court observed that the findings of the trial Court that weight of the paper containing dried LSD drops of LSD solution is required to be accounted for while determining its quantity, whether small or otherwise, is incorrect. This Court took into consideration the Chemical Analyser’s report which showed quantity of LSD drops solution was 0.4128 milligram, which was below 0.1 gm of commercial quantity and as such enlarged the accused on bail by observing that the rigors of Section 37 of the NDPS Act will not apply.

34 Another learned Single Judge of this Court in *Harsh Meshram (supra)*, whilst deciding the bail application of the applicant therein, took a similar view, as taken in *Hitesh Malhotra (supra)*.

35 Having regard to the findings of the Apex Court in *Hira Singh (Supra)*, the object and legislative intent behind enacting the NDPS Act and the discussion as stated aforesaid, I am of the view that the blotter paper forms an integral part of the LSD, when put on a blotter paper for consumption and, as such, the weight of the blotter paper containing LSD will have to be considered i.e. actual weight, for the purpose of determining small or commercial quantity of the offending drug. This Court, in *Hitesh Malhotra (Supra)* and *Harsh Meshram (supra)* has not considered the aforesaid and hence, the said orders cannot be said to have any binding effect.

36 Thus, reliance placed by the learned Special Judge (NDPS Court) on the order passed in *Hitesh Malhotra's* case, for sending the samples for testing, cannot be accepted, for the reasons stated aforesaid. Accordingly, the impugned order, directing the FSL, Gujarat to weigh the LSD sans the blotter

paper, stands quashed and set aside. However, for the reasons stated hereunder, it is necessary to send the samples again to the FSL for testing.

37 As far as the submission of the learned counsel for the respondent No. 1, that in the facts, having regard to discrepancies in the weight, and the manner of testing done, it is necessary to test the 31 blotter papers allegedly containing LSD, there is some substance in the same. A perusal of the panchanama dated 6th September 2020 with respect to the seizure of the contraband from the house of the respondent No. 1 shows that apart from other contraband drugs, i.e. ganja and charas, LSD was also seized. The panchanama reveals that in the search, one small tin box was also found in a white coloured laptop bag; that word “ALTOIDS” was printed on the box; that when the said box was opened, blots in yellow, grey and light blue colour in small pieces were found; that when the Investigating Officer asked the Respondent No. 1 about the blot papers in the tin box, Respondent No.1 allegedly replied that LSD blot papers were kept in the box for sale. Thereafter, the Investigating Officer counted the total blots in the tin-box. It was found

that there were 32 complete blot papers and 10 pieces of blot papers in pieces, in the box. It is stated that the Investigating Officer put all the 32 + 10 pieces of blots purported to contain LSD, weighing about 0.62 grams, in a small zip-locked transparent polythene packet and weighed the same. The purported LSD seized was marked as "QS1". The total weight was found to be 1.72 gms, whereas the net weight of the blot papers purported to contain LSD i.e. 32 blots + 10 pieces of blot paper, was stated to be 0.62 gm. The said polythene pouch was then heat sealed and put in a brown colour envelope and marked as "L". Admittedly, the said blot papers were not tested with any Field Testing Kit and hence, in the panchanama, it is stated to be blot papers 'purported to contain LSD'. Thereafter, the said articles were sent to the Director of the FSL at Gandhinagar, Gujarat, by the NCB, Mumbai zone, vide letter dated 5th November 2020. The Directorate of Forensic Sciences, vide their report dated 26th February 2021, have stated as under :

"Parcel Mark-QS1 :-

Exhibit Mark-QS1

1 (One) sealed brown colour paper envelope marked as 'QS1' had 07 (Seven) impressions of sealing wax on it. This

envelope contained a transparent plastic zip lock bag. Upon opening this bag it contained different color/colorless, printed/non printed, perforated/Non perforated, square shape and various size 31 (Thirty one) blot papers. The net weight of this material was 0.6200 gm. This material was recognized as exhibit mark-QS1 our laboratory.”

(Emphasis supplied)

38 The opinion given by the FSL, reads as under:

“(5) On the basis of physical examination, chemical and instrumental analysis, presence of Lysergic acid diethylamide (LSD) is detected in Exhibit Mark-QS1.”

39 The Chemical Analyser’s report shows that what was received by them was 'QS1' i.e. 31 blot papers, weighing 0.6200 grams, with no characteristic smell.

40 The FSL report is not clear, as to whether the FSL had checked every blotting paper for LSD or not, or, whether only one sample test was done and thereafter, the weight of all the blot papers, was taken into consideration. The FSL ought to have conducted an individual test of every blot paper, to

ascertain whether it has LSD on it. The NDPS Act provides stringent punishment, and hence, it was incumbent to test every blot paper for LSD. It is well possible that a few blot papers may test positive for LSD and some may not. It is also not clear, what happened to the 10 strips of blot papers that were seized, as reflected in the Panchanama. The weight of 31 blot papers and 10 strips was 0.6200 gms, when seized and the weight of 31 blot papers containing LSD, according to the FSL report, was also 0.6200 gms, which prima facie, seems improbable. Infact, some labs, in their analysis, like the FSL, at Kalina, Maharashtra, have given reports, on both, the quantity of only the LSD on the blot paper, as well as total quantity i.e. LSD with blot paper. The said fact is not in dispute. Even if the said exercise is done, whilst considering the case, the whole of the quantity i.e. LSD with blot paper is to be taken into consideration whilst considering 'small' or commercial quantity, having regard to what is stated hereinabove.

41 Having regard to what is stated hereinabove, it would be in the interest of justice, to direct the Investigating Officer, NCB, to send the sample

'QS1' to the FSL, Gujarat for ascertaining whether each of the blotter paper contains LSD. The FSL to give the weight of each of the blot papers purportedly containing LSD on it.

The Director, FSL, Gandhinagar, Gujarat to comply with the said order and submit its report within 6 weeks from today to the Trial Court.

The Investigating Officer, NCB, to forthwith communicate the said order to the Director, FSL, Gandhinagar, Gujarat within one week from today.

Accordingly, the Petition is allowed and Rule is made absolute on the aforesaid terms. The Petition is accordingly disposed of.

All parties to act on authenticated copy of this Judgment.

REVATI MOHITE DERE, J.