

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

**CRIMINAL REVISION APPLICATION NO. 83 OF 2019**

**Anant Vardhan Pathak @ Anant Satish Pathak**

**S/o. Satish Kumar Pathak**

Age : 25 years, Occupation : Business,  
Ashoka Apartments,  
Rungta Lane, Napean Sea Road,  
Mumbai

.. Applicant  
(Accused No.1)

**Versus**

**1. Union of India**

[Narcotic Control Bureau  
(F.No. NCB/BZU/CR-3/2014)]

**2. The State of Maharashtra**

.. Respondents

Mr.Ashok P. Mundargi, Senior Advocate i/b Mr. Ayaz Khan, Advocate for applicant.

Ms.P.H. Kantharia, Special P.P. for respondent No.1-UOI.

Mrs. M.H. Mhatre, APP for respondent No.2-State.

CORAM : N.J. JAMADAR, J  
RESERVED FOR ORDERS ON : 13<sup>th</sup> December 2019.  
PRONOUNCED ON : 22<sup>nd</sup> May 2020

**JUDGMENT :**

1. By this revision application, the applicant No.1 assails the legality, propriety and correctness of an order passed by the learned Special

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Judge, NDPS, Greater Bombay, on an application for discharge (Exh.56) in NDPS Complaint Case No.49 of 2014 dated 22<sup>nd</sup> January 2019 whereby the learned Judge was persuaded to reject the application.

2. Shorn of unnecessary details, the background facts necessary for the determination of this revision application can be stated as under :-

- a. The applicant is arraigned for the offences punishable under section 8(c) read with section 21(b) of The Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') for having been found in possession of and also consumed a narcotic drug along with two co-accused.
- b. The indictment against the applicant is that on 7<sup>th</sup> January 2014, the officers of the Income Tax Department conducted a search and seizure operation at Room No. 667 of Taj Palace Hotel, Mumbai in connection with the affairs of the group companies controlled by one Yash Birla. The applicant is the President of the corporate affairs of the said group. During the course of the said operation, the applicant was found in the said room along with co-accused. In

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the course of the said search and seizure operation, one of the co-accused namely Dharmu Rathod was found in possession of eight small self-knotted transparent polythene pouches containing white powdery substance kept in white paper envelope. The officers of Income Tax Department collected the said article and kept it in a safe, which was available in the said room, in the presence of the public witnesses, who were already summoned for the said search and seizure operation. The Superior Officers of the Income Tax Department thereafter informed the Zonal Director, Narcotics Control Bureau, Mumbai ('NCB') on 10<sup>th</sup> January 2014 about the said occurrence.

- c. Thereupon, the empowered officers of NCB came to the said room on 10<sup>th</sup> January 2014 and the said substance was checked with the assistance of field testing kit. It transpired that the said substance was cocaine weighing about 4.5 grams. The officers of NCB seized the said contraband material in adherence to the procedure. Panchanama came to be drawn. After completion of the investigation, charge-sheet came to be lodged against the accused

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for the offence punishable under section 8(c) read with section 21(b) of the NDPS Act.

- d. The applicant filed an application under section 227 of the Code of Criminal Procedure, 1973 ('the Code') for discharge. The respondent No.1 resisted the application by filing say and objection.
- e. The learned Special Judge was persuaded to reject the application holding *inter-alia* that there was a strong *prima-facie* evidence against the applicant which warranted framing of charge. Being aggrieved by the impugned order, the applicant has invoked the revisional jurisdiction of this Court.

3. I have heard Mr.Mundargi, the learned Senior Counsel for the applicant and Ms. P.H. Kantharia, the learned Special P.P. for respondent No.1, at some length. Perused the material on record.

4. To begin with, it is necessary to note that before the learned Special Judge, the applicant had sought discharge on multiple grounds including that the seizure memo prepared by the Income Tax Department

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does not indicate the seizure of the alleged contraband material; the contraband material was seized by the officers who were not empowered to carry out search and seizure operation under the provisions of the NDPS Act; there is a discrepancy in the remand report dated 12<sup>th</sup> January 2014 and 18<sup>th</sup> January 2014 regarding the accused on whose person the contraband material was actually found and that the complainant Mr. Dole, who had allegedly seized the contraband material on 10<sup>th</sup> January 2014 also carried out the investigation and thereby vitiated the prosecution.

5. The learned Special Judge was not inclined to accede to any of the aforesaid grounds to come to the conclusion that there was no material which warranted framing of the charge against the accused. In the process, the learned Special Judge observed that the fact that the contraband material was collected by the Income Tax Officer on 7<sup>th</sup> January 2014, during the course of search and seizure in connection with the affairs of Yash Birla Group Companies, did not strictly constitute a seizure of the contraband material. The Income Tax Officers had simply collected the said contraband substance from the co-accused and stored it

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in the safe and it was, in effect, seized by the empowered officers of respondent No.1 on 10<sup>th</sup> January 2014. Thus, the challenge to the tenability of the prosecution on the ground that the contraband substance was seized by the officers of the Income Tax Department, who were not empowered under the NDPS Act, did not merit acceptance.

6. The learned Senior Counsel mounted a serious challenge to the aforesaid observation and finding of the learned Special Judge. Laying emphasis on this aspect of the matter, the learned Senior Counsel would urge that the learned Special Judge committed a manifest error in recording a finding that the Income Tax Officers did not “seize” the contraband substance on 7<sup>th</sup> January 2014. According to the learned Senior Counsel, this erroneous view vitiated the impugned order. The learned Senior Counsel strenuously urged that in view of the governing provisions of the NDPS Act and binding precedents, the learned Special Judge could not have taken the view that the contraband was not at all seized on 7<sup>th</sup> January 2014 and it came to be seized after three days by the empowered officers of respondent No.1.

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7. Drawing attention of the Court to the provisions contained in sections 41 and 42 of the NDPS Act, which indicate that the officers who are empowered to carry out the search and seizure and prescribe the statutory safeguards in the matter of carrying out the search and seizure, it was urged with a decree of vehemence that the seizure of contraband by the Income Tax Officers on 7<sup>th</sup> January 2014 did constitute a legal seizure and the same being done by the officers neither armed with a warrant nor authorization and empowerment under the provisions of sections 41 and 42 of the NDPS Act, the prosecution is wholly untenable.

8. In opposition to this, the learned Special P.P. for respondent No.1 would urge that the context of the search and seizure operation by the officers of the Income Tax Department cannot be lost sight of. The said operation was in connection with the affairs of Yash Birla Group Companies. The officers of the Income Tax Department, during the course of the said operation, found the contraband material on the person of co-accused Dharmu Rathod. The statements of the accused recorded under section 67 of the NDPS Act squarely incriminate the accused. The officers of the Income Tax Department, in the circumstances, were justified in

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keeping the contraband substance in safe custody and informing the said fact to the concerned officer of the respondent No.1. Placing reliance upon the communication dated 10<sup>th</sup> January 2014 by the Director of the Income Tax (Inv.)-I to the Zonal Director of the respondent No.1, the learned Special PP stoutly submitted that the claim of the applicant that the contraband substance was seized on 7<sup>th</sup> January 2014 is legally untenable.

9. As the controversy sought to be raised revolves around the true import and construction of the provisions contained in sections 41 and 42 of the NDPS Act, it would be apposite to reproduce the same. Sections 41 and 42 read as under :-

***[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***

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*holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA 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 para-military 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 VA 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**

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*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 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 VA 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 VA of this Act; and*

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*(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 sub-section (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.*

16. The import of the provisions contained in sections 41 and 42 was illuminatingly postulated by the Supreme Court in the case of **Roy V.D.**

***Vs. State of Kerala***<sup>1</sup>

*“10 Sub-section (1) of [Section 41](#) of the NDPS Act enables a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class who is especially empowered by the State Government in this behalf to issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under chapter IV of the said Act. Such a warrant may also be issued for the search of any building, conveyance or place in which he has reason to believe that any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept*

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1 2000(8) SCC 590

*or concealed. Arrest or search under a warrant issued in this provision can be made at any time whether by day or by night.*

11 *Sub-section (2) of [Section 41](#) of the NDPS Act entitles any officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force who has been empowered in that behalf by general or special order of the Central Government, or any officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in that behalf by general or special order of the State Government, to arrest a person or search a building, conveyance or a place or to 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.*

12 *Sub-section (3) of [Section 41](#) of the NDPS Act says that the Officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search and the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under [Section 42](#).*

13 *Sub-section (1) of [Section 42](#) of the NDPS enumerates the powers of any such officer as is specified therein and who is duly empowered by the Central Government or the State Government, as the case may be. If he has reason to believe either from personal knowledge or on information given by any person and taken down in writing, that (a) any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed; or (b) any document or*

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*other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, he may exercise the following powers, between sunrise and sunset. They are: (i) enter into any building and search any such building, conveyance or place and if faced with any resistance, break open any door and remove any such obstacle to such entry; (ii) seize: (a) such drug or substance and other materials any other article or any animal or conveyance which he has reason to believe to be liable to confiscation under the Act and (b) any document or other article which he has reason to believe may furnish evidence of the commission of any offence relating to such drug or substance; and (iii) detain and search and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance. The proviso to sub-section (1) says that an empowered officer may also enter into any building, conveyance or enclosed place at any time between sunset and sunrise if he 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 but in such a case before so proceeding he is enjoined to record the grounds of his belief.*

14            *Sub-section (2) of [Section 42](#) contains a procedural directive to the officer who takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto to send forthwith a copy thereof to his immediate official superior.*

15            *It is thus seen that for exercising powers enumerated under sub-section (1) of [Section 42](#) at any time whether by day or by night a warrant of arrest or search*

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*issued by a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class who has been specially empowered by the State Government in that behalf or an authorisation under sub-section (2) of [Section 41](#) by an empowered officer is necessary. Without such a warrant or an authorisation, an empowered officer can exercise those powers only between sunrise and sunset. However, the proviso permits such an empowered or authorised officer to exercise the said powers at any time between sunset and sunrise if he has reason to believe that such a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender and he records the grounds of his belief.”*

17. After the aforesaid analysis of the provisions contained in sections 41 and 42 of the NDPS Act, the Supreme Court enunciated that it is plain that no officer other than an empowered officer can resort to section 41(2) or exercise powers under section 42(1) of the NDPS Act or make a complaint under clause (d) of sub-section (1) of section 36A of the NDPS Act. Consequently, any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in

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respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial.

18. It would be contextually relevant to note the facts of the case in which the aforesaid pronouncement was made. In the said case, the accused therein was searched by an Excise Inspector on 21<sup>st</sup> November 1990. The charge-sheet was lodged under section 20(B) of the NDPS Act on 20<sup>th</sup> February 1991. However, the statutory notification authorising the concerned officer to file the complaint under section 36(1)(d) of the Act, came to be issued on 20<sup>th</sup> October 1992. Initially, the accused was discharged by the learned Special Judge under the provisions of section 227 of the Code. However, the Excise Inspector filed a fresh charge-sheet against the accused for the very same offence on 17<sup>th</sup> May 1993. As the application filed by the accused before High Court of Kerala for quashing the said proceedings was dismissed, the matter came up before the Supreme Court. After adverting to the provisions of sections 41 and 42 and the pronouncement of the Supreme Court in the case of *State of*

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*Punjab Vs. Balbir Singh*<sup>2</sup>, the Supreme Court expounded the aforesaid legal position and quashed the prosecution.

19. The learned Senior Counsel for the applicant submitted that the aforesaid pronouncement is on all four with the facts of the instant case. As the initial seizure of contraband was by the officers neither authorized nor empowered under the NDPS Act, the subsequent seizure by the officers of the respondent No.1 sought to be relied upon by the prosecution is legally unsustainable.

20. Reliance was also sought to be placed on another judgment of the Supreme Court in the case of *Union of India & Ors. Vs. L.D Balam Singh*<sup>3</sup>. In the said case, a search was conducted at the residence of the accused who was an Army Personnel by the Army Officers and opium weighing 4.900 Kgs. was allegedly recovered from the official quarter of the accused. The accused was convicted and sentenced by the General Court Martial. As the safeguards prescribed in sections 41 and 42 of the NDPS Act were not adhered to, the High Court quashed the proceedings

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2 1994(3) SCC 299

3 2002(9) SCC 73

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including the order of conviction and sentence of General Court Martial. On an appeal, the Supreme Court adverted to the provisions contained in sections 41 and 42 and the observations in the aforesaid pronouncement in the case of *Roy V.D.* (Supra) and, thereafter, held that the non-compliance with the provisions contained in section 42 of the Act was fatal to the prosecution. No matter, the accused therein was an Army Personnel and the search and seizure was carried out by the Army Officers and the accused was tried before the Court Martial.

21. To bolster up the aforesaid submissions, the learned Senior Counsel submitted that the use of the words that the contraband was “isolated” from the person of co-accused Dharmu Rathod in the statements of the Income Tax Officers namely Azad Sanjay Kumar Singh and Shitendu Singh, relied upon by the prosecution, is of no significance. The substance of the matter is required to be taken into account. The facts that the Income Tax Officers had searched the person by name Dharmu, allegedly found the contraband substance and kept the same in the safe, which was available in room No. 667 on 7<sup>th</sup> January 2014, do not admit of any other inference than that of the search and seizure. The legal

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connotation of the said exercise cannot be diluted by use of the word like ‘isolation’, submitted Mr. Mundargi. Support was sought to be drawn from the meanings attributed to the words “seized” and “seizure” in the Law Lexicons.

22. To appreciate the aforesaid submission, it is necessary to note the chronology of events and the context of the matter. The statements of Income Tax Officers, namely, Arun Kumar Singh and Shitendu Singh indicate that search and seizure operation was conducted at Room No. 667, Taj Palace from 7<sup>th</sup> January 2014. The raiding party found the contraband substance in possession of co-accused Dharmu Rathod. The officers entertained suspicion. They claimed to have isolated the said substance from Dharmu Rathod and apprised the superiors. The superior officers came, and directed the raiding party to await further instructions as regards the said substance and carry on income tax search proceedings. The contraband was kept in an empty electronic safe in the presence of public witnesses. It was locked. The safe was opened on 10<sup>th</sup> January 2014 when Shri S.G. Dole, the complainant came to Room No. 667.

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23. It is pertinent to note that the panchanama of the income tax search drawn by the officers of the income tax department records that the said operation was commenced on 7<sup>th</sup> January 2014 and concluded on 10<sup>th</sup> January 2014 at 10:30 p.m. An annexure to the said panchnama records that during the said search operation, some substance which appeared to be drug was found and the officers of respondent No.1 were requested to examine the said matter by communication dated 10<sup>th</sup> January 2014. The said letter dated 10<sup>th</sup> January 2014, in turn, records that in the course of rummaging the room No. 667 in Taj Palace Hotel, Mumbai wherein the accused No.1 was present, the raiding party came across some substance which appeared to be drug. Request was thus made to the Zonal Director of respondent No.1 to verify the substance and initiate action as may be found appropriate.

24. In the backdrop of the aforesaid facts, the pivotal question which comes to the fore is whether the act of the Income Tax Officers of collecting and keeping the contraband in the safe custody on 7<sup>th</sup> January 2014 constitutes a seizure? The phraseology of sections 41 and 42 of NDPS Act, extracted above, indicates that the powers under those sections

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cannot be exercised by an officer who is not either empowered or authorized. A search and seizure operation by an officer not empowered or authorized would be without mandate of law. Such search and seizure cannot be banked upon to visit a person with the consequences envisaged by the provisions of the Act. Can this prescription be applied with equal vigour when the contraband is found per chance by the officers who are neither empowered nor authorized under the NDPS Act, is the real question. Here the context provides a legitimate answer. If the search and seizure operation is carried out by the officers who are neither empowered nor authorized with the purpose or under a belief that the suspect possesses the contraband substance, then the provisions of the Act would apply with full force and the prosecution would not be permitted to rely upon such search and the trial on the strength of such seizure would stand vitiated. However, when the officers stumbled upon the contraband substance in possession of a person in a totally different proceedings, like the income tax search at hand, different considerations ought to come into play lest the ground of non-compliance of the provisions contained in sections 41 and 42 of the NDPS Act, even in case

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of an accidental recovery of contraband substance, would cause serious prejudice to the cause of administration of criminal justice.

25. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of *State of Himachal Pradesh Vs. Sunil Kumar*<sup>4</sup>, wherein, in the context of compliance of the provisions contained in section 50 of the Act, the Supreme Court considered the question : *whether the accidental or chance recovery of narcotic drugs during a personal or body search would attract the provisions of section 50 of the NDPS Act?*. Placing reliance upon the earlier judgment in the case of *State of Punjab Vs. Balbir Singh* (Supra) and the Constitution Bench judgment in the case of *State of Punjab Vs. Baldev Singh*<sup>5</sup>, the Supreme Court held that the question posed in that case was no longer *res-integra* and answered the same in the negative. In the process, the Supreme Court explained the concept of chance recovery. Paragraph 13 thereof reads as under :

*“13 The expression “chance recovery” has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or by accident or*

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4 2014 (4) SCC 780

5 1999(6) SCC 172

*unexpectedly. In Mohinder Kumar v. State 1998 8 SCC 655 this Court considered a chance recovery as one when a police officer “stumbles on” narcotic drugs when he makes a search. In Sorabkhan Gandhkhan Pathan v. State of Gujarat 2004 13 SCC 608 the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a “chance recovery”.*”

26. In the said case, the accused Sunil Kumar was apprehended in suspicious circumstances in a routine “traffic check” by the police. The accused was asked to disembark from the bus and on his search, a polythene envelope containing a substance which looked like charas was found concealed with the help of “parna”, a piece of cloth. Applying the aforesaid test of chance recovery, the Supreme Court held that the police party accidentally or unexpectedly came across drugs carried by the accused and this could only be described as a recovery by chance since the police were neither looking for drugs nor expecting to find drugs carried by anybody. The Supreme Court extracted the following observations in the case of *State of Punjab Vs. Balbir Singh* (Supra) in para 11, which read as under :

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*“11 The relevant extract of para 25 of Balbir Singh reads as follows:*

*“(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage section 50 of the ndps act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.”*

27. In the case at hand, there is material to indicate that the Income Tax search was underway from 7<sup>th</sup> January 2014 to 10<sup>th</sup> January 2014. The panchanama drawn by the Income Tax Authorities evidences the said fact. At this juncture, it would be rather hazardous to draw an inference that the said income tax search was a subterfuge. The statements of the Income Tax Officers find requisite support in the statements of the applicant recorded under section 67 of the NDPS Act. The action of the officers of the Income Tax department in apprising the said matter of finding the suspicious substance during the course of Income Tax search,

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in the given circumstances, cannot be said to be inconceivable and unjustifiable. The response of the income tax officers in taking over and keeping the suspicious substance, in the circumstances, cannot be clothed with the character of 'seizure', in the juristic sense. On the one hand, the requisite intent to carry on search to find out contraband substance could not have been attributed to the officers of the Income Tax department. On the other hand, the officers also cannot be attributed with the competence and authority to draw a definitive inference, at that stage, that the substance found was indeed contraband. The justifiability of the communication dated 10<sup>th</sup> January 2014 is required to be considered through this prism.

28. Thus, I am not persuaded to accede to the submission on behalf of the applicant that the very act of the Income Tax Officers taking over the substance from the possession of the co-accused Dharmu Rathod amounted to "seizure".

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29. The question of the delay in communication with the authority of the respondent No.1, in the backdrop of the fact that the contraband was found on 7<sup>th</sup> January 2014 and the communication was addressed to the officers of respondent No.1 on 10<sup>th</sup> January 2014 and, thereafter, the said contraband substance was seized by the officers of the respondent No.1, may affect the credibility of the claim of the prosecution witnesses. However, that is a matter for trial.

30. In the aforesaid view of the matter, I am persuaded to hold that the learned Special Judge was within his rights in recording a finding that there was adequate material which justified a strong suspicion of accused No.1-applicant having committed the offence punishable under section 8(c) read with section 21(b) of the NDPS Act. Thus, no interference is warranted in exercise of revisional jurisdiction. Hence, the following order :

### O R D E R

The revision application stands dismissed.

The observations made hereinabove are for the purpose of determination of the application for discharge and the learned

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Special Judge shall not be influenced by any of the observations made hereinabove while determining the guilt or otherwise of the accused at the trial.

( N. J. JAMADAR, J. )

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