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Deciphering The Complexities of Clubbing of Contraband under The Narcotic Drugs and Psychotropic Substances Act, 1985: Judicial Response

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ABSTRACT

The stringent conditions under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, pose a greater challenge in balancing societal interests as contrasted against the constitutional rights of an accused. Under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, a reverse burden has been cast on the accused to present reasonable grounds for believing that he is not guilty of the offence before he is enlarged on bail. Despite an abundance of jurisprudence on the subject, there seems to be a lacuna regarding the computation of the quantity of contraband recovered from two individual accused persons who are alleged to be in conspiracy with one another. The issue of joint possession and clubbing of quantities of contraband from different accused persons has been a contentious issue in Courts. Two different views have been expounded by the Courts, either in favour of clubbing of contraband recovered at the instance of an accused person to another co-accused or holding that the practice is not permissible. The issue lacks a uniform judicial stance, leaving room for decisions specific to each case. The interpretation of these judgments underscores the complexity of Section 37 of the Act and poses an opportunity to answer the ever-escalating question whether clubbing of quantity of contraband is permissible and if yes, under what circumstances is the clubbing of contraband permissible.

Keywords: *Narcotics, Clubbing of Contraband, Joint Possession, Conspiracy, Abetment.*

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1. INTRODUCTION

The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') was enacted to consolidate decentralised laws relating to the control and regulation of narcotic drugs and substances and to bring the Act in consonance with India's international obligations. To deter drug traffickers and to curb the menace of drug trafficking, Section 37 was introduced with stringent provisions. Section 37 of the Act makes offences under the Act cognizable and non-bailable while governing the right of an accused to be released on bail pending trial only after satisfying the rigorous threshold contained therein. Section 37(1)(b)(ii) of the Act mandates that no undertrial shall be released on bail unless he can demonstrate that *there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail*. The rigours come to the fore when an individual has been accused of *an offence under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity*.[1] When commercial quantity of contraband has not been recovered and only a small or intermediate quantity is recovered from an accused, he is not required to satisfy the level of scrutiny under Section 37 of the Act.[2]

As the liberty of an accused person has a direct correlation with the quantity of contraband recovered, establishing clear procedures and standards for computing the quantity of contraband is essential. Failure to establish such procedures and standards, the accused runs the risk of being incarcerated for the entirety of the trial because, under the Act, the negation of bail is the rule and its grant is the exception.[3]At the same time, the interests of the society have to be taken into account, and the menace and pilferage of narcotic drugs and psychotropic substances within society cannot be ignored. While computing the quantity of contraband may seem straightforward when contraband is recovered from a single accused, a dilemma concerning the applicability of the rigours of Section 37 of the Act arises in a case of joint possession. Computation of contraband assumes greater proportions where multiple individuals are apprehended with either small or intermediate quantity being recovered individually from them, however, upon totalling the entire contraband recovered from all the accused persons, the quantity of contraband exceeds commercial quantity.

1 The Narcotic Drugs and Psychotrophic Substances Act, 1985 (Act 61 of 1985), s. 37(1)(b).

2 *Minni Khadim Ali Khun v. State NCT of Delhi*, 2012 SCC OnLineDel 2657; *Haresh Rawal v. Narcotics Control Bureau*, 2021 (281) DLT 202; *Hitesh Hemant Malhotra v. State of Maharashtra*, 2020 SCC OnLine Bom 3581.

3 *State of Madhya Pradesh v. Kajad*, (2001) 7 SCC 673.

Judicial pronouncements of Courts have expounded two different views on joint possession. The first view is that quantity of contraband recovered from two different accused persons, who are allegedly in a conspiracy with one another or who have been apprehended together can be clubbed together,[4] whereas, the second view believes that quantity of contraband recovered from two different persons cannot be clubbed together,[5] in view of the judgment of the Supreme Court in *Amarsingh Ramjibhai Barot v. State of Gujarat*.[6] While the issue has been fairly settled by a learned Single Judge of the Delhi High Court in *Awadhesh Yadav v. State*,[7] the present research note seeks to identify additional parameters which have been taken into account by Courts in arriving at one of the above two views.

2. A CRITICAL ANALYSIS OF JUDICIAL PRONOUNCEMENTS

The Act was amended in the year 2001, to rationalise the sentencing structure to ensure that perpetrators involved in serious drug offences are subject to stringent penalties

4 *Rafiq v. State (Govt of NCT of Delhi)*, 2021 SCC OnLine Del 3275; *Ishika v. State*, 2021 SCC OnLine Delhi 3131; *Ridhm Rana v. State (NCT of Delhi)*, (2022) 290 DLT 219; *Aakash Mehra v. Narcotics Control Bureau*, 2023 SCC OnLine Del 5597; *Sheela v. State Govt. of NCT of Delhi,* 2023 SCC OnLine Del 6391; *Awadesh Yadav v. State Govt. of NCT of Delhi*, 2023 SCC OnLine Del 7732; *Vishwajeet Singh v. State (NCT of Delhi)*, 2024 SCC OnLine Del 1284; *Bhupinder Singh @ Bhinda v. State of Punjab*, (2005) 1 RCR (Cri) 168 (FB); *Rajo v. State of Haryana*, 2020 SCC OnLine P&H 4846; *Sunil v. State of Punjab*, CRM-M No. 26278/2023 [High Court of Punjab and Haryana, Decided on 12.09.2023]; *Malkit Singh v. State of Punjab*, CRM-M No. 47340/2021 [High Court of Punjab and Haryana, Decided on 05.07.2022]; *Rama Ram v. State of Punjab*, [High Court of Punjab and Haryana, Decided on 16.09.2020]; *Veena Devi v. State of Himachal Pradesh*, 2020 SCC OnLine HP 3470; *Sipahi Kumar v. State of Kerela*, (2020) 2 KLJ 868; *Muhammed Sadath v. State of Kerela*, 2023 SCC OnLine Ker 1913.

5 *Raju Diwakar @ Pappu v. State,* BAIL APPLN. 44/2020 [High Court of Delhi, Order dated 13.02.2020]; *Sachala Nayak v. State of NCT of Delhi*, BAIL APPLN 3351/2021 [High Court of Delhi, Order dated 30.09.2021]; *Anita v. State (NCT of Delhi)*, BAIL APPLN 1538/2022 [High Court of Delhi, Order dated 20.07.2022]; *Anita @ Kallo v State (NCT of Delhi)*, 2023 SCC OnLine Del 4178; *Mohd. Ali Nawaz v. State* [High Court of Delhi, Order dated 17.08.2023]; *Gagandeep Singh @ Gagna v. State of Punjab*, CRM-M No. 43279/2020 [High Court of Punjab and Haryana, Decided on 07.04.2021]; *Vicky Kaur v. State of Punjab,* 2018 SCC OnLine P&H 6949; *Avtar Singh Sangha v. State of Punjab*, 2022 SCC OnLine P&H 4063; *Sandeep Singh v. State of Punjab*, CRM-M No. 21794/2023 [High Court of Punjab and Haryana, Decided on 05.05.2023]; *Buta Singh @ Buti v. State of Punjab*, CRM-M No. 2349/2016 [High Court of Punjab and Haryana, Decided on 26.02.2016]; *Muthu Kumar v. Station House Officer, Kottakkal Police Stn.*, (2008) 2 KLJ 379; *Jitender Singh Bagga v. State of Chhattisgarh*, M.CR.C. No. 8315/2021 [High Court of Chhattisgarh, Bilaspur, Decided on 22.11.2021]; *Dhanmati Patel v. State of Chhattisgarh*, M.CR.C. No. 2778/2022 [High Court of Chattisgarh, Bilaspur, Decided on 27.06.2022]; *Mahendri Visoi v. State of Chattisgarh*, M.CR.C No. 2877/2022 [High Court of Chattisgarh, Bilaspur, Decided on 18.07.2022]; *Sufiya v. State of Chattisgarh*, M.CR.C No. 5548/2022 [High Court of Chattisgarh, Bilaspur, Decided on 05.08.2022].

6 *Amarsingh Ramjibhai Barot v. State of Gujarat,* (2005) 7 SCC 550.

7 *Awadhesh Yadav v. State,* 2023 SCC OnLine Del 7732.

and required to meet onerous bail conditions, whereas, individuals charged with minor drug offences, particularly those struggling with addiction are kept out of the purview of Section 37 of the Act. Under the rationalised sentencing scheme, the concept of '*small quantity'* and '*commercial quantity'* was introduced. The duration of punishment that an undertrial may be sentenced to, as well as, the level of scrutiny that an accused has to satisfy before being enlarged on bail is hinged upon the quantity of contraband recovered from him.[8]

Following is the analysis made to further discuss the response of the Judiciary:

2.1 Response of The High Court of Delhi

The decision of the Delhi High Court in *Raju Diwakar @ Pappu v. The State*[9] is one of the earlier decisions in which the Court held that the petitioner could not be charged with joint possession, noting that the co-accused had expired. The Court to arrive at the conclusion relied upon the judgment of the Punjab and Haryana High Court in *Vicky Kaur v. State of Punjab*,[10] which had in the opinion of the authors had misinterpreted the judgment of the Supreme Court in *Amarsingh Ramjibhai Barot*.[11] Whereas in *Rafiq v. State (Govt of NCT of Delhi)*[12]*,* a contention was on behalf of the applicant that as the contraband recovered from him was less than the commercial quantity and the quantity of contraband recovered from the co-accused cannot be clubbed, the rigours of Section 37 would not apply to him. The contention was negated by the Court taking into account that both the accused persons were travelling in the same vehicle and the co-accused had prior antecedents under the Act. To a similar effect is the decision of the Court in *Ishika v. State,*[13] wherein a similar contention was raised before the Court. While the Court did not specifically deal with the said contention, the petition was dismissed taking into account the close connectivity between the petitioner and the co-accused, established through call detail records.

At this juncture, it would also be relevant to refer to the decision of the Court in *achala Nayak v. State of NCT of Delhi*,[14] wherein the learned Single Judge relied upon the

8 *E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau*, (2008) 5 SCC 161.

9 *Raju Diwakar @ Pappu v The State,* BAIL APPLN. 44/2020 [High Court of Delhi, Order dated 13.02.2020].

10 *Vicky Kaur v. State of Punjab,* 2018 SCC OnLine P&H 6949.

11 *Supra* note 6.

12 *Rafiq v. State (Govt of NCT of Delhi),* 2021 SCC OnLine Del 3275.

13 *Ishika v. State,* 2021 SCC OnLine Del 3131.

14 *Sachala Nayak v. State of NCT of Delhi,* BAIL APPLN 3351/2021 [High Court of Delhi, Order dated 30.09.2021].

judgment of Division Bench of the Kerala High Court in *Muthu Kumar v. Station House Officer, Kottakal Police Stn*[15] and granted bail to the bail applicant noting that *prima facie,* no commercial quantity of contraband was recovered from the bail applicant. It is pertinent to note herein that the Court in *Sachala Nayak* did not have the benefit of the judgment of *Rafiq*[16] *and Ishika*,[17] both of which were pronounced prior in time. The judgment of *Sachala Nayak*[18] and *Raju Diwakar @ Pappu*[19] were followed in *Anita v. State (NCT of Delhi)*,[20] where by way of an interim order a specific question of law was framed by a learned Single Judge being "*Whether the recovery made from the co-accused can be added to the recovery made from the applicant?*", the Court after taking into consideration the aforementioned two judgments held that the recovery made from the co-accused cannot be added to the quantity recovered from the applicant. The decision of *Anita*[21] was followed by a co-ordinate bench in *Anita v. State (NCT of Delhi)*[22]and *Mohd. Ali Nawaz v. State*.[23] Thereafter, the judgments of *Anita* and *Mohd. Ali Nawaz Khan* were differentiated by a learned Single Judge in *Sheela v. State Govt of NCT of Delhi*,[24] wherein the quantity of contraband recovered from two accused persons who were travelling together was clubbed noting that charges in the present case had been framed for commercial quantity, which was not in the case of *Mohd. Ali Nawaz Khan*.[25]

The judgment of a learned Single Judge in *Awadesh Yadav*[26] is the most important decision of the Court on the subject. The learned Single Judge after taking into account and discussing the law on the subject enumerated the circumstances and parameters to be taken into consideration for clubbing of contraband and how the same can be permitted at the stage of considering a bail application. The said parameters are:

i. invocation of Section 29 of the Act is a must before contraband can be clubbed.

ii. the nature and quality of the incriminating material connecting the accused persons with one another collected by the prosecuting agency and

15 *Muthu Kumar v. Station House Officer, Kottakal Police Stn.,* 2008 SCC OnLine Ker 100.

16 *Supra* note 22.

17 *Supra* note 23.

18 *Supra* note 24.

19 *Supra* note 19.

20 *Anita v. State (NCT of Delhi),* BAIL APPLN 1538/2022 [High Court of Delhi, Order dated 20.07.2022].

21 2023 SCC OnLine Del 6391.

22 *Anita v. State (NCT of Delhi),* 2023 SCC OnLine Del 4178.

23 *Mohd. Ali Nawaz v. State,* BAIL APPLN 1305/2023 [High Court of Delhi, decided on 17.08.2023].

24 *Sheela v. State Govt of NCT of Delhi,* 2023 SCC OnLine Del 6391.

25 *Supra* note 33.

26 *Supra* note 7.

iii. the antecedents of the accused person.

The decision for the first time concretised the circumstances under which clubbing of contraband was permissible and thereafter has been followed in *Habibullah Nabi Zada v. N.C.B*[27] and *Vishwajeet Singh*.[28] However, the authors of the present research note do not agree with the finding of the Court that for clubbing of contraband, invocation of Section 29 of the Act is mandatory for the reason that the Trial Court while framing charges against the accused persons can frame a charge under Section 29, even if the prosecution complaint does not allege any offence under Section 29 of the Act. The Court also has the power to amend or modify the charges as per the scheme of the Code of Criminal Procedure, 1973.

2.2 Response of The Punjab And Haryana High Court

Before embarking on an appreciation of various judgments of the Punjab and Haryana High Court, reference to the decision of *Bhupinder Singh @ Bhinda v. State of Punjab*[29] would be profitable. A full bench of the Court in *Bhupinder Singh @ Bhinda*[30] held that it would not be open for the accused persons at the stage of bail to contend that the quantity of contraband recovered from two or more accused persons should be divided among them. However, a subtle distinction needs to be pointed out at this stage i.e. the case in question pertained to splitting of contraband and did not pertain to clubbing of contraband.

In *Rajo v. State of Haryana*,[31] the High Court while deciding the bail application of the petitioner who was apprehended at a bus stop with her 2 sisters, all of them carrying poppy straw negated the contention that only the contraband which was seized from the bail applicant was to be considered. The Court to arrive at the aforesaid conclusion also took into account the nature of their relationship and the fact that all three sisters were apprehended together from the spot of recovery. It would also not be out of place to state here that the Court while dismissing the bail application referred to the decision of the Supreme Court in *Amarsingh Ramjibhai Barot*[32] and clarified that the said decision cannot aid the bail applicant as no edict with respect to 'joint possession' was laid by the Court

27 *Habibullah Nabi Zada v. N.C.B,* 2023 SCC OnLine Del 7732.

28 *Supra* note 15.

29 *Singh @ Bhinda v. State of Punjab,* (2005) 1 RCR (Cri) 168 (FB).

30 *Ibid*.

31 *Rajo v. State of Haryana,* 2020 SCC OnLine P&H 4846.

32 *Supra* note 6.

in context of a bail application. Similarly, in *Sunil v. State of Punjab*,[33] after noting that the accused and the co-accused were travelling together, it was held by the Court that the accused persons had conscious possession of the contraband and as a *sequitur* their bail applicant was dismissed.

In *Gagandeep Singh @ Gagna v. State of Punjab,*[34] a view in conflict with the decision of *Rajo*[35] was taken by the Court holding that the recovery effected from the co-accused cannot be clubbed together with that of the bail applicant. The Court to arrive at the aforesaid finding relied upon the judgment of the Supreme Court in *Amarsingh Ramjibhai Barot's* case.[36] Further, the Court did not have the advantage of the judgment of the co-ordinate bench in *Rajo*[37] as the same was not cited before the Court. The said line of reasoning has been adopted by the Court in various decisions *viz. Buta Singh @ Buti v. State of Punjab*,[38]*Navneet Kaur @ Neetu v. State of Punjab,*[39]*Avtar Singh Sangha v. State of Punjab*[40] and *Sandeep Singh v. State of Punjab*.[41] As has already been discussed in the earlier part of this note, this interpretation of the judgment of the Supreme Court does not seem to be good in law and consequently, in the opinion of the authors of this note, the above-noted judgments also do not lay down the correct position of law.

2.3 Response of The Kerala High Court

In *Muthu Kumar,*[42] the Kerala High Court held that the applicants therein could not be denied the concession of bail taking into account the total quantity of contraband recovered from all three persons weighing 31.150 kgs of *Ganja*, when the three accused persons were individually carrying contraband which weighed less than the commercial quantity. The correctness of the decision of *Muthu Kumar* was doubted by a learned Single

33 *Sunil v. State of Punjab,* CRM-M No. 26278/2023 [High Court of Punjab and Haryana, Decided on 12.09.2023].

34 *Gagandeep Singh @ Gagna v. State of Punjab,* CRM-M 43279/2020 [High Court of Punjab and Haryana, Decided on 07.04.2021].

35 *Supra* note 41.

36 *Supra* note 6.

37 *Supra* note 41.

38 *Buta Singh @ Buti v. State of Punjab,* CRM-M No. 2349/2016 [High Court of Punjab and Haryana, Decided on 26.02.2016].

39 *Navneet Kaur @ Neetu v. State of Punjab,* CRM-M 29038/2022 [High Court of Punjab and Haryana, Decided on 14.07.2022].

40 *Avtar Singh Sangha v. State of Punjab,* 2022 SCC OnLine P&H 4063.

41 *Sandeep Singh v. State of Punjab,* CRM-M No. 21794/2023 [High Court of Punjab and Haryana, Decided on 05.05.2023].

42 *Supra* note 25.

Judge of the Court in *Muhammed Sadath v. State of Kerala*[43] observing that the Division Bench of the Court had not taken into account the impact of Section 29 of the Act as the same had not been invoked by the prosecution. The Court further noted that the secret information on the basis of which the accused persons were apprehended pointed out that the bail applicant along with his wife and another person was travelling in three different vehicles carrying contraband, consequently the Court held that the recovery from all the accused persons could be clubbed together.

3. RESPONSE OF THE SUPREME COURT OF INDIA

The judgment of the Supreme Court in *Amarsingh Ramjibhai Barot*[44] is often cited by defence counsel to support their contention that the quantities of contraband recovered from two different accused cannot be clubbed together.[45] The judgment in turn has also been relied upon by the Courts for the above proposition and the Courts have invariably released the under-trial in view of the fact that since commercial quantity of contraband was not recovered from the under-trial and either intermediate or small quantity was recovered, he would not be required to satisfy the rigours of Section 37 of the Act.[46] In the respectful submission of the authors of the present research note, the above interpretation of the judgment does not seem to be good in law.

In *Amarsingh Ramjibhai Barot*,[47] the Supreme Court was adjudicating the Special Leave Petition of the petitioner, after his conviction had been upheld by the Division Bench of the High Court. The facts of the case are that the petitioner and the co-accused were travelling in a jeep and alighted from the vehicle. They were proceeding towards Gokul Hotel, when they were apprehended. The petitioner was convicted by the Trial Court under Sections 17 and 18 read with Section 29 of the Act which was upheld by the High Court. Before the Supreme Court, a specific contention was raised on behalf of the petitioner that

43 *Muhammed Sadath v. State of Kerala,* 2023 SCC OnLine Kerala 1913.

44 *Supra* note 6.

45 *Gagandeep Singh @ Gagna v. State of Punjab*, CRM-M No. 433279/2020 [High Court of Punjab and Haryana, Decided on 07.04.2021], *Navneet Kaur @ Neetu v. State of Punjab*, CRM-M 29038/2022 [High Court of Punjab and Haryana, Decided on 14.07.2022]; *Sandeep Singh v. State of Punjab*, CRM-M No. 21794/2023 [High Court of Punjab and Haryana, Decided on 05.05.2023]; *Sufiya v. State of Chattisgarh*, M.CR.C No. 5548/2022 [High Court of Chattisgarh, Bilaspur, Decided on 05.08.2022]

46 *Gagandeep Singh @ Gagna v. State of Punjab*, CRM-M No. 433279/2020 [High Court of Punjab and Haryana, Decided on 07.04.2021], *Navneet Kaur @ Neetu v. State of Punjab*, CRM-M 29038/2022 [High Court of Punjab and Haryana, Decided on 14.07.2022], *Avtar Singh Sangha v. State of Punjab*, 2022 SCC OnLine P&H 4063, *Buta Singh @ Buti v. State of Punjab*, CRM-M No. 2349/2016 [High Court of Punjab and Haryana, Decided on 26.02.2016], *Sufiya v. State of Chattisgarh*, M.CR.C No. 5548/2022 [High Court of Chattisgarh, Bilaspur, Decided on 05.08.2022]

47 *Supra* note 6.

the High Court erred by taking into account the total quantity of the contraband recovered from the petitioner as well as the co-accused and the said contention was accepted by the Court noting that there was no evidence to suggest that there was any conspiracy or abetment in terms of Section 29 of the Act between the appellant and the co-accused.

What manifests from the above decision is that an accused cannot be sentenced for joint possession when there is no evidence to suggest that the accused and the co-accused were in conspiracy with each other or there was any abetment as defined by Section 29 of the Act. The dictum does not observe that the recovery effected from an accused cannot be clubbed with the recovery effected from another accused under any circumstance. This interpretation of the afore-noted judgment has been endorsed by the Delhi High Court in *Ridhm Rana v. State (NCT of Delhi)*,[48] *Awadesh Yadav v. State Govt. of NCT of Delhi*,[49] and *Vishwajeet Singh v. State (NCT of Delhi)*.[50] It is also important to note that the decision of *Amarsingh Ramjibhai Barot*[51] was passed in an appeal after evidence had been led by either side and the benefit of the evidence was available to the Court.

From the aforesaid, it is established that contraband recovered from an accused cannot be linked with another unless evidence of conspiracy or abetment under Section 29 of the Act is presented, now the question remains whether an individual has to satisfy the mandate of Section 37 of the Act even if no contraband is found in his possession? Fortunately, the answer to the above question has been settled by the Supreme Court in *Union of India v. Rattan Malik*[52] and *Union of India v. Md. Nawaz Khan*[53] wherein it was held that the mere absence of possession of contraband on the person of the accused does not absolve him of the level of scrutiny under Section 37(1)(b)(ii) of the Act. A mere assertion on the part of the accused person that he had no conscious possession of the contraband or that no recovery of contraband was made from his person would no *ipso facto* lead to grant of bail. With the aforesaid principles in mind, it can now be ascertained under what circumstances can an accused person be charged with joint possession of contraband.

4. CONCLUSION

The Narcotic Drugs and Psychotropic Substances Act, 1985 poses its unique challenges, and the aspect of clubbing of contraband is one of them. With an increase in trade and commerce, the pilferage of Narcotic Drugs and Psychotropic Substances within

48 *Ridhm Rana v. State (NCT of Delhi),* 2022 SCC OnLine Del 771.

49 *Supra* note 7.

50 *Vishwajeet Singh v. State (NCT of Delhi),* 2024 SCC OnLine Del 1284.

51 *Supra* note 6.

52 *Union of India v. Rattan Malik,* (2009) 2 SCC 624.

53 *Union of India v. Md. Nawaz Khan,* (2021) 10 SCC 100.

the society has also multiplied manifold but at the same time, the liberty of an accused cannot be curtailed mechanically. Some of the factors which can be identified from the above judgments are enumerated as under, however, the said factors cannot be exhaustively laid due to the unique facts and circumstances of every case.

i. Where the accused persons are apprehended on the basis of secret information, the nature of secret information and the details disclosed therein are relevant considerations. In case, the secret information discloses that certain accused persons are in conspiracy with one another and acting on the information, the investigating authorities apprehend the accused persons in proximity to one another, clubbing on contraband shall be permissible.

ii. The antecedents of the bail applicant and the co-accused apprehended from the spot, if any, is a relevant consideration. If the bail applicant or the co-accused have previous antecedents under the NDPS Act, it can be safely assumed that they know the tricks of the trade and have deliberately carried a quantity of contraband less than the commercial quantity to avoid the rigours under Section 37 of the Act.

iii. To sustain a conviction under the provisions of the NDPS Act for joint possession of contraband, it would be obligatory on the part of the prosecution to present compelling evidence to establish the conspiracy between the accused persons.

iv. In a case, where all the accused persons are apprehended from the spot and it is apparent that the accused had conscious possession i.e. the accused exercised control and dominion over the contraband in the possession of the co-accused, it would not be possible to attribute the contraband to a single accused.

v. Where during the course of the trial, charges have been framed by the Learned Trial Court, due consideration has to be given to the fact whether charges have been framed for commercial quantity or intermediate quantity or small quantity, as the case may be.

What is apparent from the above discussion is that it would be incorrect to say that the quantity of contraband cannot be clubbed in any scenario. Rather, it would suffice to say that every bail application has to be decided keeping in mind its own facts and circumstances, further, it is luminously clear from the above discussion that no straitjacket formula has been adopted by the Courts, as each case is fact specific.