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Procedural Shortfalls in Narcotics Enforcement: A Judicial Review of Section 103 of the Customs Act, 1962 vis-à-vis the NDPS Act, 1985

SRINIVASAN GOPAL, IRS¹

ABSTRACT

This article examines the procedural shortcomings in narcotics enforcement, focusing on the use of Section 103 of the Customs Act, 1962 in cases governed by the NDPS Act, 1985. It highlights how failure to comply with mandatory provisions—such as prior intelligence documentation, timely production before a magistrate, and proper medical procedures—can vitiate prosecution and violate constitutional safeguards. Drawing on key judicial decisions, the article underscores the legal obligation of officers to prioritize NDPS procedures over general customs powers when specific intelligence is available, and offers practical recommendations to ensure lawful and effective enforcement.

1. Understanding Procedural Compliance and Legal Implications

This article explores critical procedural lapses by Customs authorities in narcotics-related cases, particularly focusing on the misuse of Section 103 of the Customs Act, 1962 when specific intelligence triggers the application of the NDPS Act, 1985. It evaluates legal principles governing arrest, custody, and medical procedures, supported by judicial precedents, and stresses the importance of adhering to constitutional safeguards. The article offers guidance to empowered officers, legal practitioners, and judges for ensuring procedural compliance in criminal investigations under the NDPS framework.

2. Distinction Between Custody and Arrest

Judicial Precedents and Constitutional Safeguards

In the case of **Habib Bedru Omer v. Customs [2025:DHC;4870]**, the Hon'ble Delhi High Court *vide* the impugned judgment dated 03.06.2025 granted bail primarily due to critical procedural lapses by the Respondent, particularly a fundamental misunderstanding of the legal distinction between "custody" and "arrest." The applicant was intercepted on 21.05.2023

¹ Author is an Assistant Director at National Academy of Customs, Indirect Taxes and Narcotics, Palasamudram, Andhra Pradesh, India.

based on specific intelligence about narcotic drug ingestion, yet his formal arrest was shown only on 26.05.2023. During this period, the Customs officers exercised full control over the bail applicant—transferring custody among officers *via* "handing over–taking over" memos and stationing officers outside his hospital room round-the-clock—yet failed to produce him before a Magistrate within 24 hours, thereby violating Articles 21 and 22 of the Constitution of India.

Relying on the decisions in the case of *Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others* -(1980) 2 SCC 559, *Directorate of Enforcement v. Subhash Sharma* - 2025 INSC 141, *Kaushik Rameshchandra Thakkar v. State of Maharashtra Through PI* - 2025 SCC OnLine Bom 1493, *Mrs. Iqbal Kaur Kwatra v. The Dist. General of Police, Rajasthan State, Jaipur* - 1996 SCC OnLine AP 206, the Hon'ble High Court held as under:

“24. In view of the aforesaid judgments, there can be no doubt that the applicant was under the “custody” of the respondent, since the time of his interception on 21.05.2025. As pointed out hereinabove, “The Handing Over” –“Taking Over” memos prepared by the Customs clearly show the transfer of applicant’s custody from one officer to the other of the respondent. It is further recorded therein, that appropriate procedure was to be followed as per the Customs Act, 1962 or NDPS Act, 1985 meaning thereby, that the concerned Officers were conscious of the fact that the applicant was being detained for suspicion of commission of offence punishable under the NDPS Act. It is the case of the respondent itself, that the applicant had admitted that he was carrying capsules of contraband for which he was taken to Safdarjung Hospital for ejection. Although, the case of the respondent is that there was no prior information with regard to the applicant, however, the two documents as pointed out hereinabove, *i.e., panchnama dated 26.05.2023 and seizure memo under Section 43(a) of the NDPS Act dated 26.05.2023, clearly records the fact that there was specific intelligence with regard to arrival of the present applicant with the allegedly recovered contraband.*”

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28. The applicant was in the continuous custody of the respondent from 21.05.2023 till 26.05.2023 without any authorisation. “Handing

Over” and “Taking Over” memos annexed with the complaint leaves no manner of doubt that the custody of the applicant was being transferred from one Officer to the other on the basis of the rotational duties. Thus, in the opinion of this Court, such custody without any authority and without producing him before the concerned Magistrate or Special Court within 24 hours in accordance with law is completely illegal. Even if the applicant was under medication for the procedure being carried out, the same cannot be a ground to keep him in custody. Magistrates exercising power of remand or otherwise in respect of persons in hospital is not unheard of and well recognised procedure in law.

29. Thus, the respondent without producing the applicant within 24 hours of his detention continued to keep him in Safdarjung Hospital till his final arrest on 26.05.2023. In view of the above, **this Court holds that the applicant was kept in illegal custody by the respondent from 21.05.2023 to 25.05.2023. His arrest on 26.05.2023 stands vitiated.** In terms of the judgment of Hon’ble Supreme Court in Subhash Sharma (supra), **rights of the applicant guaranteed under Articles 21 and 22 of the Constitution of India have been violated, and therefore, he has to be released on bail despite the restrictions provided under Section 37 of the NDPS Act.** The applicant has been in judicial custody since the date of his formal arrest, i.e., 26.05.2023, and has undergone incarceration for more than 2 years as of today.

3. Examining Prior Information and Adherence to the NDPS Act, 1985

The Hon’ble High Court, while rejecting the contention of the respondent to the effect that “the present case is not of prior information or any specific intelligence as the present applicant was apprehended on suspicion/profiling while he was passing through the green channel for X-Ray of his baggage and thus, the question of non-compliance of Section 42 of the NDPS Act does not arise” held as under:

“27. In the present case, admittedly, the documents of the respondent shows that there was specific intelligence/prior information with regard to the arrival of the present applicant with the contraband. It is, however, the case of the respondent in the complaint filed before the

*learned Special Court that the applicant was intercepted on the basis of suspicion/profiling. **The sequence of events and record would reflect that from the very interception, the respondent had reasons to believe that the applicant was carrying the contraband recovered.** In these circumstances, it was incumbent upon the concerned Officer to comply with the provisions of the NDPS Act. Admittedly, there has been no such compliance and the respondent proceeded to detain the applicant without complying with the aforesaid procedure. The respondent was bound to comply with the aforesaid provisions from the time the applicant was intercepted at the IGI Airport. In any case, when the first set of capsules were seized by panchnama dated 21.05.2023, the respondent was bound to act in accordance with the provisions of the NDPS Act. It is pertinent to note that the report under Section 57 of the NDPS Act was sent only on 26.05.2023.'*

Emphasis applied.

4. Misapplication of Section 103 of the Customs Act, 1962

When NDPS Provisions Should Have Applied Instead

The Customs authorities erroneously claimed that the applicant was not in "custody" but had voluntarily consented to screening under Section 103 of the Customs Act, 1962. However, this section applies only in cases of general customs checks, not when specific intelligence of narcotic drugs or psychotropic substances or controlled substances is involved. The existence of such intelligence, acknowledged in both the panchnama and seizure memo dated 26.05.2023, mandated compliance with the NDPS Act, 1985 particularly Section 42, which **requires prior written record of the information and prompt reporting to superior officers.**

The reliance on Section 103 of the Customs Act, 1962 was legally untenable in light of the Hon'ble Supreme Court's rulings in *State of Punjab v. Balbir Singh* - 1994 AIR 1872 : 1994 SCC (3) 299 : JT 1994 (2) 108 : 1994 SCALE (1)793 which makes it clear that when a search is based **on specific prior information relating to narcotic drugs**, strict procedural compliance under the NDPS Act is mandatory, and failure to do so vitiates the arrest and subsequent proceedings. It would be extremely useful at this stage to extract relevant portion of the judgment rendered by the Hon'ble Supreme Court in the case of *Balbir Singh*

"25. The question considered above arise frequently before the trial

courts. Therefore we find it necessary to set out our conclusions which are as follows :

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(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

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The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case. “

Emphasis applied.

In view of these constitutional and procedural violations, the Hon'ble High Court of Delhi held that the bail applicant was kept in illegal custody and that his arrest stood vitiated, entitling him to bail despite the recovery of a commercial quantity of narcotics despite the provisions of Section 37 of the NDPS Act, 1985.

5. Applicability of Section 103 of the Customs Act, 1962 to Proceedings under the NDPS Act, 1985 When Specific Information Was Available

Understanding Procedural Compliance and Legal Implications

Here we examine the procedural lapses in invoking Section 103 of the Customs Act, 1962 in cases governed by the NDPS Act, 1985. It evaluates judicial precedents and statutory requirements, highlighting how improper application of legal provisions affects the legitimacy of arrests and prosecutions.

The Respondent admitted to having prior information on ingestion of narcotic drugs by the passenger. The Hon'ble High Court observed in Para 16 as under:

“16. As per the case of the respondent, the applicant was discharged from the said hospital on 25.05.2023 and a Panchnama-5 dated 26.05.2023 was prepared at 09:00 Hours and concluded at 12:30 hours on the said date and was prepared at Customs Arrival Hall of Terminal-3, IGI Airport, New Delhi. In the said panchnama, in the first para itself, it is recorded as under: -

*“The Custom Officer informed us that **he had received specific information about one passenger, Mr. Habib Bedru Omer (D.O.B. 12-09-1991), S/o Shri Budiru Omer, R/o H.No. 441, Ayate Road, Addis Ababa, Ethiopia (as told by the Pax), Holder of Ethiopian Passport No. EP7807550 issued on 27.01.2023 and valid up to 26.01.2028, arrived at IGI Airport, New Delhi on 21.05.2023 from Addis Ababa to New Delhi by Flight No. ET 686 dated 20.05.2023 was suspected to have swallowed/ingested pellets/capsules containing a narcotic substance, which are liable to confiscation under the provisions of NDPS, Act, 1985 read with Customs Act, 1962.***

(emphasis supplied)”

(Original Emphasis by the Hon'ble High Court)

The Hon'ble High Court went on to observe that the respondent did have prior information as was evident from the order passed on 26.05.2023, *wherein again, it has been recorded as under: -*

“On specific intelligence one passenger Mr. Habib Bedru Omer (D.O.B: 12-09-1991), S/o Shri Budiru Omer, R/o H.No.441, Ayate Road, Addis Ababa, Ethiopia (as told by the Pax), Holder of Ethiopian Passport No. EP7807550 issued on 27.01.2023 and valid up to 26.01.2025, arrived at IGI Airport, New Delhi on 21.05.2023 from Addis Ababa to New Delhi by Flight No. ET 686 dated 20.05.2023 was intercepted at Green Channel carrying one small grey colour trolley bag. On further enquiry the pax accepted that he was concealed some capsules in his body subsequent to which the pax was taken for Medical Examination. The Pax was found to have swallowed some capsules and subsequently Pax was admitted to hospital for medical procedure to recover the same. A total of 75 capsules were recovered and were sealed in the presence of Panchas at Safdarjung Hospital as per panchanama-2 to 4.

(emphasis supplied)”

(Original Emphasis by the Hon’ble High Court)

“11. Heard learned counsel for the parties and perused the record. Admittedly, in the present case, the applicant was intercepted by the Customs on 21.05.2023. As per first Panchnama-1 dated 21.05.2023 drawn on T-3, IGI Airport, New Delhi, it is recorded that after search conducted in pursuance of a notice issued under Section 102 of the Customs Act and as well as under Section 50 of the NDPS Act, no recovery had taken place. Thereafter, another notice under Section 103 of the Customs Act dated 21.05.2023 was issued whereby, the applicant was informed that the concerned Officer has reason to believe that he had goods liable to confiscation secreted inside his body and in order to get the same ejected, he had to be x-rayed, to which, the applicant had voluntarily agreed to get x rayed.”

12. It is the case of the respondent that the applicant was thereafter taken to Safdarjung Hospital and was admitted there till his discharge

on 25.05.2023 at about 18:30 hours. During the aforesaid period, the applicant allegedly eased out the swallowed capsules, which were seized vide three panchnamas, out of which one was prepared on 21.05.2023 and the other two were prepared on 22.05.2023.

13. Admittedly, the respondent did not produce the applicant before any Magistrate or the Special Court before his admission at Safdarjung Hospital. The case of the Customs is that the applicant volunteered to get himself admitted in order to ease out the capsules swallowed by him. On the back side of the MLC of the applicant prepared at the Safdarjung Hospital, there is a noting by Mr. Ashish Bisht, ACO, Shift A, IGI Airport, New Delhi, that the applicant has been 'handed over' by ACO Shift-C, IGI Airport, New Delhi at 06:30 PM on 21.05.2023. On the said MLC relevant endorsements have been mentioned as "handed over by" and "taken over by". There is an additional noting which reads as under: -

"The aforementioned PAX Mr. Habib Bedru Omer (D.O.B. 12-09 1991) handed over to you, you are requested to take for the necessary action as per Customs Act, 1962, NDPS Act, 1985 and other allied Acts."

Emphasis applied.

6. Procedural Lapses Under Section 103 of the Customs Act

Non-Compliance with Legal Safeguards

Notwithstanding the above, assuming but not admitting that the provisions of section 103 of the Customs Act, 1962 is applicable to the case at hand, it can be seen that there has been non-compliance here too. It would be extremely profitable to reproduce para 2(iii) and (iv) of the impugned judgment for ease of understanding:

"2 2. The case of the respondent against the applicant as per their complaint dated 20.11.2023 is as under: -

(i) xxx

ii) Thereafter, he was served with notice under Section 102 of the Customs Act, 1962, and Section 50 of the NDPS Act. Personal and

baggage search of the applicant was conducted but nothing was found. However, it was suspected that he was concealing narcotic substance inside his body and on further enquiry, the applicant accepted that he has concealed some capsules in his body, so in order to do screening/x-ray of his body, notice under Section 103 of the Customs Act was served to him whereby he was informed that x-ray/screening of his body is required, to which he consented and he admitted that he had ingested some pellets/capsules containing some narcotic substances and further voluntarily submitted his willingness for undergoing procedure for removal of the said secreted capsules/pellets from his stomach. The same was duly recorded in Panchnama-1 dated 21.05.2023 drawn at T-3, IGI Airport, New Delhi.

iii) The applicant was then taken to Safdarjung Hospital, New Delhi for x-ray/CT scan/Medical Examination. During the medical examination, the applicant was found to have swallowed some capsules and accordingly, the applicant was admitted into the aforesaid hospital. During his stay in hospital, the applicant eased out the swallowed capsules and accordingly, 3 panchnamas (Panchanamas-2,3,4) were prepared, one on 21.05.2023 and two on 22.05.2023, in Emergency Building of the Safdarjung Hospital whereby, 75 capsules of contraband were allegedly recovered from him. The said panchnamas were duly signed by the applicant, the panchas and the officers present there. The recovered capsules were kept in separate plastic containers and were sealed after affixing paper slip duly signed by Customs Officers, panchas and the accused/applicant.”

Emphasis applied.

It would be extremely helpful to reproduce the provisions of section 103 of the Customs Act, 1962, which is as under:

“SECTION 103. Power to screen or X-ray bodies of suspected persons for detecting secreted goods. -

¹(1) Where the proper officer has reason to believe that any person

referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall,—

(a) with the prior approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, including his consent for such screening or scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or

(b) produce him without unnecessary delay before the nearest magistrate.]

(2) A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

(5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

(6) Where on receipt of a report from the proper officer under clause

(a) of sub-section (1) or from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction :

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Explanation. - For the purposes of this section, the expression "registered medical practitioner" means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956)."

Notes

¹. Substituted vide FINANCE (NO. 2) ACT, 2019 w.e.f. 01-08-2019 before it was read as

"(1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate."

It can be easily discerned from para 2(ii) of the judgment *vis a vis* the provisions of section 103 of the Customs Act, 1962 that there is a non-compliance of section 103 of the Customs

Act, 1962 in as much as the Respondent-Customs Authorities had to follow one of the two options viz.

- (i) If approved by the Deputy or Assistant Commissioner of Customs, the person may be screened or scanned using available equipment at the customs station, while ensuring their legal rights, including their consent. If the scan suggests hidden goods inside their body, a report will be sent to the nearest magistrate.
- (ii) Alternatively, the person may be taken to the nearest magistrate without unnecessary delay.

7. Key Provisions of Section 103 of the Customs Act, 1962

- **Authority to Detain and Screen Suspects:** If customs officer suspect that a person has any goods liable to confiscation (under the Customs Act, 1962) secreted inside his body, he may detain and screen the individual, but only with **prior approval** from the Deputy Commissioner or Assistant Commissioner of Customs.
- **Legal Safeguards & Consent:** Screening or scanning must be conducted while respecting the suspect's legal rights under existing laws, and their consent must be obtained for such procedures.
- **Immediate Reporting to Magistrate:** If hidden goods are suspected, the results of the screening must be reported to the nearest magistrate without delay.
- **Alternative Course of Action:** If screening isn't conducted, the suspect must instead be **produced before a magistrate without unnecessary delay**.
- **Judicial Oversight:** The magistrate may discharge the suspect if there is no reasonable ground for believing that they have concealed contraband in their body.
- **Role of Medical Professionals:** Upon magistrate approval, the suspect must be examined by a qualified radiologist, and any medical reports or X-ray images must be forwarded to the magistrate promptly.
- **Medical Supervision for Removal of Contraband:** If the magistrate determines that contraband is present, removal must be conducted under the supervision of a registered medical practitioner.
- **Custodial Authority:** The magistrate may order custody for a specified period to enforce compliance.

It is evident from paragraphs 2(ii) and (iii) of the Customs Act, 1962 that the prescribed

procedures were not followed. Merely taking the suspect to the hospital does not satisfy the requirements of **Section 103 of the Customs Act, 1962**, which mandates either prior screening at the customs station or immediate presentation before a magistrate. Regardless of the perspective, there is clear non-compliance with **Section 103 of the Customs Act, 1962**, despite claims that it was adhered to in the given circumstances. Notably, the **NDPS Act, 1985** does not contain any provisions for conducting an X-ray examination of a suspect carrying contraband falling under the ambit of the NDPS Act, 1985 on his person/body.

It may be seen that the even while complying with the provisions of section 103 of the Customs Act, 1962, it should be ensured that

- the x-ray film nor the ultrasound film of the accused;
- doctors who depose in the Ld. Trial Court should prove any x-ray report or medical report showing the substance of foreign body in the body of accused; &
- if the prosecuting agency fails to bring on record the first primary evidence with reference to presence of foreign material in the body of the accused and no explanation is brought on record, the Ld. Court would read in adverse to the prosecution.

8. Case Study: NCB v. Okonkwoh Monday Tony

Judicial Scrutiny of Medical Procedures in Narcotics Cases

The Learned Special Judge (NDPS) emphasized procedural safeguards in narcotics cases involving ingestion of contraband. He highlighted discrepancies in capsule recovery records, showing how missing evidence and contradictory testimonies undermine prosecution integrity.

The Learned Special Judge (NDPS), while adjudicating **NCB v. Okonkwoh Monday Tony [SC No.251/2017; CNR No. DLND01-010241-2017]**, emphasized the procedural safeguards necessary when subjecting individuals to X-ray examinations. The judgment highlighted the importance of strict compliance with Section 103 of the Customs Act, 1962, ensuring that medical procedures are conducted with proper authorization, judicial oversight, and adherence to legal standards. Failure to follow these mandated steps can compromise the integrity of the investigation and weaken the prosecution's case, reinforcing the principle that procedural lapses cannot be overlooked in narcotics-related offenses.

“21. In the present matter, the case of NCB started when on the basis of secret information, they apprehended the accused and took him to

Safdarjung Hospital where ultrasound and x-ray of accused was conducted but ironically neither the x-ray film nor the ultrasound film of the accused has been brought on record by the NCB, even no reason has been mentioned by the NCB in the whole complaint why the x-ray film and ultrasound film of the accused has not been produced in court. PW4 Dr. J Satya Sarthi proved the casualty record of accused as Ex.PW4/A and deposed that the accused was referred for USG abdomen and x-ray abdomen, PW5 Dr. Niranjana Kumar deposed that he examined the accused and USG finding of rectum was distended, therefore, he referred the accused to surgery department and made endorsement on the MLC of accused (Ex.PW5/A) but neither the doctor PW4 Dr. Satya Sarthi nor PW5/Dr. Niranjana Kumar proved any x-ray report or medical report showing the substance of foreign body in the body of accused, therefore, the NCB has failed to bring on record the first primary evidence w.r.t. presence of foreign material in the body of the accused and no explanation has been brought on record by the NCB for failure to bring on record, the primary evidence of x-ray and CT scan.

*22. PW7 Dr. Jaspreet Singh Bajwa has deposed that on 06.02.2017 at 07:30 pm accused eased out 33 capsules, at 10:00 pm accused eased out 50 capsules, at 11:30 accused passed 38 more capsules (total 88 capsules have been passed) while as on 07.02.2017, accused has passed 90 capsules but during cross examination, PW7 has deposed that he did not know when the last two capsules were ejected by the accused. The capsules as per PW7 were eased out in presence of NCB officials in presence of NCB officials in washroom and the accused entered into the washroom and came out in the presence of PW7, therefore, it means that the PW7 was in the room and the capsules out in washroom by the accused in presence of some NCB official and that NCB official in whose presence the capsules were eased out by accused never appeared in the witness box to depose, even the IO/PW11 Pradeep Singh during cross examination has deposed that **“it is correct that I was not present in the hospital***

every time, the accused expelled the capsules. I do not know if the accused has expelled any capsule when I was present in the hospital. Vol. every time the expelled capsules were kept in safe custody under the lock and key in the presence of accused by the NCB staff and hospital staff. ” but Ironically neither the IO PW11 or any of the NCB official is a witness of easing out of capsule by the accused. As per PW7 only 88 capsules were eased out but the MLC of accused Ex.PW7/A is stating different story as in the MLC on 06.02.2017 at 07:30 it is mentioned that patient passed approximately 33 capsules, at 10:30 patient passed 50 capsules and at 11:30 patient passed 38 more capsules therefore, total comes to 121 capsules and not 88 as deposed by PW 7 Dr. Jaspreet Singh Bajwa nor 90 as per case of NCB, therefore, in view of the contradiction in the number of capsules and absence of testimony of NCB official in whose presence accused eased out capsules in washroom, it creates a doubt on the case of department. ”

22. PW7 Dr. Jaspreet Singh Bajwa has deposed that on 06.02.2017 at 07:30 pm accused eased out 33 capsules, at 10:00 pm accused eased out 50 capsules, at 11:30 accused passed 38 more capsules (total 88 capsules have been passed) while as on 07.02.2017, accused has passed 90 capsules but during cross examination, PW7 has deposed that he did not know when the last two capsules were ejected by the accused. The capsules as per PW7 were eased out in presence of NCB officials in presence of NCB officials in washroom and the accused entered into the washroom and came out in the presence of PW7, therefore, it means that the PW7 was in the room and the capsules out in washroom by the accused in presence of some NCB official and that NCB official in whose presence the capsules were eased out by accused never appeared in the witness box to depose, even the IO/PW11 Pradeep Singh during cross examination has deposed that "it is correct that I was not present in the hospital every time, the accused expelled the capsules. I do not know if the accused has expelled any capsule when I was present in the hospital. Vol. every time the expelled capsules were kept in safe custody under the

lock and key in the presence of accused by the NCB staff and hospital staff. " but Ironically neither the IO PW11 or any of the NCB official is a witness of easing out of capsule by the accused. As per PW7 only 88 capsules were eased out but the MLC of accused Ex.PW7/A is stating different story as in the MLC on 06.02.2017 at 07:30 it is mentioned that patient passed approximately 33 capsules, at 10:30 patient passed 50 capsules and at 11:30 patient passed 38 more capsules therefore, total comes to 121 capsules and not 88 as deposed by Jaspreet Singh Bajwa nor 90 as per case of NCB, therefore, in view of the contradiction in the number of capsules and absence of testimony of NCB official in whose presence accused eased out capsules in washroom, it creates a doubt on the case of department."

Emphasis applied.

9. Judicial Precedents Highlighting Illegal Detention

Case Law Reinforcing Procedural Violations

In Criminal Application No. 2630 of 1989, decided on January 9, 1990, by the Hon'ble High Court of Bombay in the case of **Ashak Hussain Allah Detha Alias v. Assistant Collector of Customs (1990 (1) TMI 308 - BOMBAY HIGH COURT)**, the court provided a clear and insightful interpretation of the concept of arrest, its meaning, and its commencement.

"IV. "ARREST" - MEANING AND COMMENCEMENT OF :

"7. Admittedly, the Applicants were detained without any authority from the midnight of 20th July, 1989 to 5.20 p.m. of 21st July, 1989 - for 17 hours. Their arrest has been so recorded that their production before the Magistrate falls within 24 hours stipulated by Art. 22(2) of the Constitution of India and S. 57 of the Code of Criminal Procedure. The Prosecution urges that after the "arrest" they were not detained beyond 24 hours. This submission is a distortion of the true meaning of the constitutional guarantee against detention without the sanction of judicial Tribunal. The word "arrest" has not been defined in the Code of Criminal Procedure or in any other law. The true meaning needs to be understood. The word "arrest" is a term of art. It starts with the arrester taking a person into his custody by action on or words

restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate's judicial act *Christie v. Leachinsky*, (1947) 1 All ER 567; *Holgate Mohammed v. Duke*, (1984) 1 All ER 1054. Both quoted in *WORDS AND PHRASES LEGALLY DEFINED Vol. 1, Third Edition* - page 113.). **In substance, "arrest" is the restraint on a man's personal liberty by the power or colour of lawful authority (The Law Lexicon - P. Ramanatha Aiyar Reprint Edition 1987, page 85).** In its natural sense also "arrest" means the restraint on or deprivation of one's personal liberty (*The Law Lexicon - T. P. Mukherjee*, (1989) page 177-178.) It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences (*The Law Lexicon - P. Ramanatha Aiyar Reprint Edition 1987, page 85*). Whether a person is arrested or not does not depend on the legality of the Act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. **Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases (The Law Lexicon - T. P. Mukherjee (1989), Page 177-178).** It stands to reason, therefore, that what label the investigating officer affixes to his act of restraint is irrelevant. **For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.**

The argument that the applicants were not arrested at the mid-night of 19th July, 1989 but were detained for interrogation is untenable. Since the offences under the N.D.P.S. Act are cognizable (Section 37(1) of the N.D.P.S. Act), the Investigating Officers possess the authority to arrest without warrant. They arrest a suspect or do not arrest at all. The "detention in custody for interrogation" is unknown to law. Interrogation is known. A person may be lawfully interrogated. But during such interrogation he is a free man. If he is detained, not

allowed to leave the office of the Respondent No. 1 and compelled to eat and sleep there, he is under detention. This restraint is in reality an arrest. In this case, the applicants were not allowed to leave the Office of the Respondent No. 1 after the mid-night of 19th July, 1989. In the circumstances of this case, the applicants were arrested at the mid-night of 19th July, 1989.

8. The Investigating Officers may lawfully detain a suspect for an offence. But detention in custody for interrogation is not authorised by law. The Investigating Officers may detain for an offence only. In an English Case where the Customs Officers detained a person "for helping with their inquiries", it was held that there was no authority in the Customs Officers to detain a person except for an offence (R. v. Lemsatef - (1977) 2 All ER 835. "If the idea is getting around amongst either customs and excise officers or police officers that they can arrest or detain people, as the case may be, for this particular purpose, the sooner they disabuse themselves of that idea the better"). The principle that emerges is this : Any restraint on a person's liberty except for an offence is illegal. There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.

On this principle it follows that the detention of the Applicants on the mid-night of 19th July, 1989 was illegal if it was not for having committed an offence under the N.D.P.S. Act. If it was for having committed an offence, the detention was "arrest" and it commenced at the mid-night of 19th July, 1989.

9. My experience of such illegal detention is not confined to this case. In Arvind Mehram Patel and another v. The Intelligence Officer, Narcotics Control Bureau, Bombay (Criminal Appln. No. 2508 of 1989, decided on 9th November, 1989), the suspects were detained from 1.00 a.m. of 1st October, 1989 to 4.00 p.m. of 4th October, 1989 when they were produced before the Magistrate. During this period, they too were assaulted. In Prajesh Shantilal Vaghani v. The Intelligence Officer, Narcotics Control Bureau, Bombay (Cri. Appln. No 2631 of 1989 decided on 6-12-1989 (reported in 1990 Cri LJ 903.),

and Hamid Umar Patel v. Y. O. Shah Intelligence Officer, Narcotics Control Bureau, Bombay (Cri. Appln. No. 2631 of 1989 decided on 6-12-1989 the accused were similarly detained from 6th September, 1989 to 10th September, 1989 and were assaulted. They were produced before the Magistrate on 10th September, 1989. The tendency to detain suspects for questioning and manipulate the record to show a later time of arrest is a reprehensible practice of recent origin followed only by the Officers of the Customs Department and the Narcotics Control Bureau. In cases under the N.D.P.S. Act and Customs Act, the prosecution is, no doubt, entitled to rely upon the statements of the accused recorded during investigation. But what the Investigating Officers do, in such cases, is to procure statements, by assault, illegal detention and fear of continued detention. Then they present there documents as "statements". That is not what the law permits them to do. They can certainly rely upon the statements made by the accused voluntarily. But that is different from saying that the statements may be procured by any means and the accused be convicted on such statements. This manipulation and abuse of the legislative sanction for the use of statements of the accused requires to be censured in the strongest terms."

Emphasis applied.

The above Order was quoted in the following cases:

Sl. No.	Description of case
1	MARFING TAMANG @ MAAINA TAMANG v. STATE (NCT OF DELHI). - 2025 (2) TMI 176 - DELHI HIGH COURT
2	KSHITIJ GHILDIYAL v. DIRECTOR GENERAL OF GST INTELLIGENCE, DELHI - 2024 (12) TMI 1001 - DELHI HIGH COURT
3	DILBAG SINGH @ DILBAG SANDHU, KULWINDER SINGH v. UNION OF INDIA AND ANOTHER - 2024 (2) TMI 772 - PUNJAB AND HARYANA HIGH COURT

4	PRANAV GUPTA AND VINEET GUPTA v. UNION OF INDIA AND ANOTHER - 2023 (12) TMI 1111 - PUNJAB AND HARYANA HIGH COURT
5	SUBHASH SHARMA v. DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA THROUGH ASSISTANT DIRECTOR, ZONAL OFFICE, CHHATTISGARH. - 2022 (11) TMI 49 - CHHATTISGARH HIGH COURT
6	GAUTAM THAPAR v. DIRECTORATE OF ENFORCEMENT - 2021 (10) TMI 201 - DELHI HIGH COURT
7	SMT. AMAL MUBARAK SALIM AL REIYAMI AND OTHERS VERSUS. UNION OF INDIA - 2015 (9) TMI 196 - RAJASTHAN HIGH COURT
8	PADMARAM VERSUS SUPERINTENDENT (PROSECUTION), CENTRAL CUSTOMS AND EXCISE DEPARTMENT, JAIPUR - 2013 (1) TMI 818 - RAJASTHAN HIGH COURT
9	MAA SARASWATI TRADERS THROUGH THE LEGAL POWER OF ATTORNEY, RAJESH SINGH, S/O SRI J.S. SINGH VERSUS THE UNION OF INDIA THROUGH THE COMMISSIONER OF CUSTOMS (PREVENTIVE) 4TH FLOOR, CENRAL REVENUE BUILDING BIRCHAND PATEL PATH, PATNA AND THE ASSISTANT COMMISSIONER CUSTOMS (PREVENTIVE) DIVISION, THE INSPECTOR CUM SEIZING OFFICER, CUSTOMS (PREVENTIVE) DIVISION, BIHAR - 2012 (2) TMI 607 - PATNA HIGH COURT

10. Importance of Medical Evidence and Documentation

Prosecution's Burden of Proof

Investigators must preserve primary medical evidence, including:

- X-ray films and ultrasound reports.
- Testimony from doctors confirming foreign objects inside the accused. Failure to produce such documentation weakens prosecution cases and raises doubts about procedural legitimacy.

Here are the key points that the prosecuting agency must ensure involving ingestion and Xray is involved:

- **Proper Documentation of Medical Evidence:** X-ray films, ultrasound reports, and CT scan records must be preserved and submitted as primary evidence.
- **Explanation for Missing Evidence:** If any crucial medical evidence is unavailable for whatever reason, the prosecuting agency must provide a clear justification for its absence.
- **Compliance with Section 103 of the Customs Act, 1962:** Screening or scanning procedures must be conducted in accordance with statutory requirements, ensuring the suspect's legal rights are met. Section 103 of the Customs Act, 1962 should not be invoked when there is a prior information under the NDPS Act, 1985
- **Testimony and Corroboration by Medical Experts:** Doctors who conduct medical examinations must provide direct evidence confirming the presence of foreign material in the accused's body.
- **Chain of Custody Maintenance:** Any recovered material must be properly documented, sealed, and verified by independent witnesses.
- **Timely Presentation Before a Magistrate:** The accused must be presented before a magistrate without unnecessary delay, ensuring procedural fairness. Should the Government declare a public holiday, efforts may be made to obtain the
- **Strict Compliance with Due Process:** Every step in the investigation and prosecution must align with statutory mandates to prevent procedural lapses that could weaken the case.

Failure to follow these essential legal requirements can compromise the integrity of the prosecution and impact judicial outcomes. In this case, since specific intelligence was available, the provisions of Section 42 of the NDPS Act, 1985 would apply, despite the airport being classified as a public place under Section 43 of the Act. Therefore, the invocation of Section 43(a) by the Respondent-Customs is not appropriate, as the procedural requirements outlined in Section 42 should govern the search and seizure process.

11. Upholding Legal Precision in Narcotics Enforcement

Judicial precedents reinforce the principle that the empowered officers must follow statutory mandates without exception, ensuring that fundamental rights, evidentiary standards, and procedural requirements are upheld at every stage of investigation and prosecution. The failure to comply with these legal safeguards raises concerns over the legitimacy of detentions, arrests, and evidence admissibility. To uphold legal precision and procedural

integrity, enforcement officers must:

- Ensure strict compliance with NDPS Act, 1985 and the Rules and Regulations framed thereunder rather than applying the procedure prescribed under the Customs Act, 1962.
- Adhere to constitutional safeguards on arrest, detention, and medical evidence preservation.
- Ensure that the rights guaranteed under the Constitution of India are strictly adhered to.
- Apply judicial precedents as guiding principles in enforcement practices to prevent procedural lapses.
