

PRACTICE NOTE — CRIMINAL LAW (NARCOTICS)

The Narcotic Drugs and Psychotropic Substances Act, 1985

Quantity-based offence & sentencing scheme, search-seizure safeguards, S.37 bail bar, presumptions, and forfeiture/treatment provisions

STRUCTURE	V Chapters (incl. Ch. VA), 83 Sections
KEY AMENDMENTS	1988, 2001 (quantity-based sentencing), 2014 (treatment/consumer reforms), 2021
QUANTITY IS DECISIVE	Small / intermediate / commercial quantity — substance-specific, fixed by Central Govt. notification u/S.2(viia) & 2(xxiii)
BAIL — S.37	Twin conditions apply to commercial-quantity & specified offences — stringent bar over ordinary CrPC/BNSS bail principles
NODAL AGENCY	Narcotics Control Bureau (NCB), Ministry of Home Affairs — coordinates with State Excise/Police/Customs/DRI

KEY DEFINITIONS

S.2(XIV) & 2(XXIII) — NARCOTIC DRUG / PSYCHOTROPIC SUBSTANCE • Narcotic drug: coca leaf, cannabis, opium, poppy straw, and their derivatives/manufactured drugs. Psychotropic substance: any substance listed in the Schedule to the Act (natural or synthetic) capable of inducing dependence.	S.2(III) — CANNABIS (HEMP) • Covers charas (resin), ganja (flowering/fruitley tops), and mixtures/preparations thereof — bhang and cannabis seeds/leaves without the tops are generally excluded, a frequent point of dispute in charging/quantity computation.
---	--

QUANTITY-BASED OFFENCE & SENTENCING SCHEME

CATEGORY	DETERMINATION	PUNISHMENT (ILLUSTRATIVE — SS.15–22, 25 ETC.)
Small quantity	At or below the substance-specific limit fixed by Central Govt. notification	Rigorous imprisonment up to 1 year, and/or fine up to ₹10,000.
Intermediate (lesser than commercial)	More than small, less than commercial quantity	Rigorous imprisonment up to 10 years, and fine up to ₹1 lakh.
Commercial quantity	At or above the substance-specific commercial threshold	Rigorous imprisonment 10–20 years (mandatory minimum 10), and fine ₹1–2 lakh (court may impose a higher fine for reasons recorded).

SEARCH, SEIZURE & ARREST — PROCEDURAL SAFEGUARDS

S.42 — POWER OF ENTRY, SEARCH & SEIZURE • Officer acting on "reasonable belief" of an offence must record the information/grounds in writing and forward it to the immediate superior within 72 hours — a mandatory safeguard against arbitrary action.	S.43 — SEIZURE IN A PUBLIC PLACE • Where the offence occurs in a public place (conveyance, public transport, open space), the officer may search/seize/arrest without the prior recording required under S.42 — narrower procedural formality, wider power.
---	--

SEARCH, SEIZURE & ARREST — PROCEDURAL SAFEGUARDS (CONTD.)

S.50 — RIGHT TO SEARCH BEFORE A MAGISTRATE/GAZETTED OFFICER

- For **personal search** of the accused, the officer **must inform the accused of the right** to be searched before a nearby Magistrate or Gazetted Officer. This safeguard is **mandatory** — non-compliance vitiates the search and often the conviction (Constitution Bench, *Vijaysinh Chandubha Jadeja v. State of Gujarat*, 2011).

S.52A — SAMPLING & DISPOSAL OF SEIZED DRUGS

- Seized narcotic drugs/substances must be **inventoried, sampled, and certified before a Magistrate** at the earliest — bulk material may then be disposed of, preventing indefinite malkhana storage while preserving evidentiary integrity.

PRESUMPTIONS — REVERSE BURDEN ON THE ACCUSED

S.35 — PRESUMPTION OF CULPABLE MENTAL STATE

- Once the prosecution proves the foundational facts (e.g. possession), the court shall **presume the existence of a culpable mental state** — the accused must disprove this, though only on a **preponderance of probability**, not beyond reasonable doubt.

S.54 — PRESUMPTION FROM POSSESSION

- Possession of a narcotic drug/psychotropic substance, or of specified articles used in illicit traffic, **without satisfactory account**, raises a presumption that the accused has committed the offence — shifting the burden to the accused to explain.

BAIL — SECTION 37 TWIN CONDITIONS

AN ADDITIONAL, STRINGENT BAR OVER ORDINARY BAIL LAW

- For offences involving **commercial quantity** (and specified offences such as S.19, S.24, S.27A), bail can be granted **only if**: (i) the **Public Prosecutor has been given an opportunity to oppose** the application, and (ii) where opposed, the court is satisfied there are **reasonable grounds for believing the accused is not guilty** of the offence **and is unlikely to commit any offence** while on bail.
- Courts have consistently held these twin conditions are **mandatory, not directory** — bail cannot be granted merely on procedural infirmities in the prosecution case without the court recording satisfaction on both limbs.

IMMUNITY & TREATMENT FOR ADDICTS — S.27 & S.64A

S.27 — PUNISHMENT FOR CONSUMPTION

- Consumption of narcotic drugs/psychotropic substances is punishable — rigorous imprisonment up to **1 year** (cocaine, morphine, diacetylmorphine and specified substances) or up to **6 months** (other drugs), and/or fine — markedly lighter than trafficking/possession offences.

S.64A — IMMUNITY FOR ADDICTS UNDERGOING TREATMENT

- An addict charged under S.27, or with a small-quantity offence, who **voluntarily seeks treatment** at a government-recognised de-addiction centre, is granted **immunity from prosecution** — immunity is withdrawable if treatment is not completed.

AGGRAVATED OFFENCES, FORFEITURE & TRIAL STRUCTURE

S.27A — FINANCING ILLICIT TRAFFIC & HARBOURING OFFENDERS

- Financing (directly/indirectly) illicit trafficking, or harbouring persons engaged in it, is punishable with rigorous imprisonment of **10–20 years** and fine of **₹1–2 lakh** — among the most severe provisions, frequently invoked with conspiracy charges against financiers/kingpins rather than mere carriers.

S.31A — ENHANCED PUNISHMENT FOR REPEAT OFFENCES

- A second/subsequent conviction for specified offences involving commercial quantity attracts enhanced punishment — rigorous imprisonment up to **30 years**, or (as a discretionary, not mandatory, maximum) **death**. The Bombay High Court and Supreme Court (*Indian Harm Reduction Network v. UOI*, 2011) struck down the earlier **mandatory** death penalty as unconstitutional.

CHAPTER VA — FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY

- Modelled on SAFEMA — a Competent Authority may **freeze and forfeit** property of a "specified person" (and relatives/associates) illegally acquired through, or held for the purpose of, illicit drug trafficking, subject to a show-cause and appellate procedure (Ss.68A onward).

SPECIAL COURTS & APPEAL — S.36, S.36A, S.36B

- Special Courts** are constituted for speedy, exclusive-jurisdiction trial of NDPS offences; appeal from a Special Court's judgment/order lies **directly to the High Court** (S.36B) — bypassing the ordinary Sessions-Court appellate tier.

COMPOUNDING & SENTENCING FACTORS

GENERALLY NON-COMPOUNDABLE; S.32B SENTENCING FACTORS

- Given the gravity of narcotics offences, **compounding is not ordinarily available** for substantive NDPS offences (unlike many civil/quasi-criminal statutes covered elsewhere in this note series).
- Where punishment can exceed the prescribed minimum, S.32B directs courts to weigh factors such as the **quantity involved relative to the minimum**, the accused's role (financier/organiser vs. carrier), prior convictions, and any harm to others — relevant at both conviction and appellate/revisional stages.

PRACTICE NOTES

Always Check the Substance-Specific Quantity Notification

Small/intermediate/commercial quantities are fixed **per substance** by Central Government notification (not a single Act-wide figure) — verify the current notified quantity for the specific drug before advising on bail eligibility or likely sentencing exposure.

Commercial-Quantity Bail Is an Uphill Task

Given the S.37 twin-condition bar, prepare the strongest possible prima facie case (chain of custody defects, S.42/S.50 non-compliance, FSL report gaps) at the **very first bail application** — repeated applications rarely succeed absent a genuine change in circumstances.

S.50 Compliance Is Often the Strongest Defence

Scrutinise whether the accused was actually informed of, and offered, the right to be searched before a Magistrate/Gazetted Officer — non-compliance under *Vijaysinh Chandubha Jadeja* can be fatal to the prosecution's case regardless of the quantity recovered.

Consider the S.64A Treatment Route for Consumer-Clients

For clients facing consumption/small-quantity charges with a genuine addiction, voluntary enrolment in a recognised de-addiction programme under S.64A can secure immunity from prosecution altogether — raise this option early, before framing of charge.

For internal practice reference only — this note highlights select, frequently used provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended in 1988, 2001, 2014 and 2021) and does not cover the full Act, Rules, Schedules, or State-specific notifications. Cross-check exact section text, the current substance-wise quantity notification, and the latest case law before relying on this in advice or proceedings. Prepared 6 August 2026.

Primary sources: The Narcotic Drugs and Psychotropic Substances Act, 1985, as amended (indiacode.nic.in, dor.gov.in); Narcotics Control Bureau; *Vijaysinh Chandubha Jadeja v. State of Gujarat* (2011) and *Indian Harm Reduction Network v. Union of India* (Bombay HC, 2011); commentary via [ipleaders](http://ipleaders.com), SCC Online Blog, Bhatt & Joshi Associates, Advocate Gandhi, and Airacle Labs.