Dilip Vs State

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SooperKanoon Citation : sooperkanoon.com/905142

Court : Delhi

Decided On : Jul-02-2010

Judge : Mr. Badar Durrez Ahdmed ; Mr. Ajit Bharihoke, J J

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985, sections 2(iii)(a) , 2(iii)(b), 20, 23, 22

Appeal No. : BAIL APPLN 2330/2008

Appellant : Dilip

Respondent : State

Advocate for Def. : Ms Mukta Gupta with Mr Amit Sharma, Advs.

Advocate for Pet/Ap. : Mr Sanjiv Kumar ; Mr D.M. Bhalla ; Mr S.K. Santoshi, Advs.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment Yes

2. To be referred to the Reporter or not Yes

3. Whether the judgment should be reported in Digest Yes

ORDER

1. The following question has been referred to this Bench by a learned Single Judge of this court:-

"Whether the percentage of THC in a sample of charas can by itself be determinative of the purity of the sample and whether such test is relevant or necessary for the purpose of considering the grant of bail or of awarding of sentence in terms of Section 21 read with Section 37 of the NDPS?"

2. The above question was referred by the learned single Judge of this court by virtue of an order dated 01.05.2009. The background for such a reference is that in the course of hearing of the bail application, one of the points that arose for consideration was whether the percentage content of Tetrahydrocannabinol (THC) in the quantity of charas recovered from the petitioner could actually be determinative of its purity. As per the prosecution, the petitioner was found in possession of 4 1/2 kg of charas which would fall in the category of commercial quantity. The petitioner has been in custody since 24.05.2005. During the trial, Dr Madhulika Sharma, Assistant Director (Chemistry), Forensic Science Laboratory had deposed that she had found the parcel sent to her in the present case to be containing charas and that she had not determined the percentage of THC in the said samples as, in her view, it was not necessary in terms of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act).

3. Before the learned single Judge, it was urged on behalf of the petitioner that it was not only possible, but necessary for determining the purity percentage thereof which, in turn, was necessary to classify the quantity recovered under one of the three categories, namely, small, intermediate or commercial. Reliance had been

placed by the learned counsel for the petitioner on two single Bench decisions in the case of Union of India v. Stephen Andreas Hofman: 2007 VII AD (Delhi) 486 and Krit Mehto v. State: 2008 (2) JCC (Narcotics) 94.

4. On the other hand, the learned counsel for the State submitted that, although THC was one of the constituents of charas, it was not at all necessary to quantify the THC content in a contraband sample so as to determine as to whether it was charas or not and also for the purposes of determining its purity percentage. The attention of the learned single Judge, who referred the question to the Division Bench, was also drawn to a Division Bench decision of the Himachal Pradesh High Court in the case of Kamaal Chand v. NCB Chandigarh: 2008 (3) Crimes 354 (HP), wherein the said court took the view that as per the definition given in Section 2(iii)(a) of the NDPS Act, charas was a separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also included the concentrated preparation and resin known as "hashish oil" or "liquid hashish". The said court had also apparently accepted the contention that the quantum of THC found in the sample was not determinative of the category in which the recovery ultimately fell, i.e., whether it was a small quantity, intermediate quantity or a commercial quantity. In the order dated 01.05.2009, passed by the learned single Judge of this court, it is observed that the evidence in the form of the affidavit and the statement of the scientific expert Dr Madhulika Sharma of the FSL, Rohini, was not available to this court when it gave its decision in Stephen Andreas Hoffman (supra). He also noted the contention of the learned counsel for the State that the decisions with regard to percentage purity in Ansar Ahmed v. State: 123 (2005) DLT 563 and E. Micheal Raj v. NCB: [AIR 2008 1720 (SC) = 2008(5) SCC 161] related to diacetylmorphine and not to charas which stood on an entirely different footing.

5. In this backdrop, the learned single Judge felt that the question which arose for determination was of substantial importance and, therefore, he was of the view that it would be appropriate that the question be placed before a Division Bench of this court for its decision. It is in these circumstances that the question referred to above has been placed before us for our decision.

6. On behalf of the petitioner, it was argued that THC was the main constituent of charas and that the percentage of THC present in a recovery of contraband, would, therefore, be determinative of the actual quantity of charas in the said alleged recovery. It was contended that in Stephen Andreas Hofman (supra), the contention with regard to percentage of THC present in the contraband as being determinative of the category in which the recovery fell, was accepted by a single Judge of this court. Similarly, in Krit Mehto (supra), a learned single Judge of this court had directed that the percentage of THC be determined by the Forensic Science Laboratory because, according to the learned counsel, the court felt that the same would be material for the purposes of considering the question of bail and ultimately at the stage of trial also. The learned counsel for the petitioner placed reliance on the decision of this court in the case of Ansar Ahmed (supra) and of the Supreme Court in E. Micheal Raj (supra), wherein the percentage of diacetylmorphine in the sample recovered was held to be determinative of the actual content of the heroin (diacetylmorphine) for the purposes of catergorising the recovery as a small quantity, intermediate quantity or commercial quantity. The learned counsel placed heavy reliance on the United Nations Bulletin on Narcotics, Volume XXXVII, No.1, 1985 and, particularly on the following passage:-

" GLC analysis of cannabis products is, however, extremely useful in the determination of the total tetrahydrocannabinol (THC) content, which is generally believed to be the most satisfactory indicator indicator of the "quality" of the product [26-28]. The concentration of THC is used to calculate the quantity of cannabis or cannabis resin used in liquid cannabis (hashish oil). However, the analyst must know both the country of origin of the liquid cannabis exhibit and the average THC content of the resin or herbal material produced in that country. The herbal or resin source can be easily inferred from the presence or absence of cannabidiol in a TLC examination. As far as seizures made in the United Kingdom are concerned, virtually all the "resin-belt" countries export liquid cannabis containing high levels of cannabidiol (e.g. India, Lebanon, Morocco, Pakistan). Of the countries that do not produce cannabis resin, only Jamaica and Kenya have exported liquid cannabis, which in both cases has been found to be devoid of cannabidiol and is thus from a herbal source. Typical concentration factors in liquid cannabis are 2 to 4 times for the "resin" countries and 6 to 10 times for

the "herbal" countries; for either variety the optimum THC level is approximately 30 per cent by weight, although the rare Indian or Nepalese sample has been found to contain 50 to 60 per cent."

7. It was also contended by the learned counsel for the petitioner that the decision in Kamaal Chand (supra) was distinguishable in view of the fact that in that case, a definite opinion had been given that the sample was charas and the accused had not questioned the report. He further submitted that charas, bhang and ganja are all derived from the cannabis plant; ganja is the flowering part of the plant as defined in Section 2(iii)(b) and charas is the resin derived from the stem, branches and leaves as defined in Section 2(iii)(a). Bhang, which is nothing but the crushed leaves of the cannabis plants, is not defined in the NDPS Act and is, therefore, neither classified as a narcotic drug nor as a psychotropic substance. He submitted that in order to distinguish bhang from ganja and charas, it BAIL APPLN No.2330/08 Page No.5 of 20 would be necessary to examine the THC content and for this reason also, the percentage of THC present in the alleged contraband recovered would be very material for the purposes of the NDPS Act.

8. On the other hand, the learned counsel for the State submitted that cannabis (hemp) has been defined in Section 2(iii). She submitted that cannabis (hemp) could mean, (a) charas, (b) ganja, or (c) any mixture, with or without any neutral material of any form of charas or ganja or any drink prepared therefrom. She further submitted that charas as defined in Section 2(iii)(a) meant the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also included the concentrated preparation of the said resin known as hashish oil or liquid hashish. Ganja is defined in Section 2(iii)(b) as the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops, by whatever name they may be known or designated. She submitted that the definition of cannabis does not bear any reference to the quantum of THC either in charas or in ganja or in any mixture. Consequently, according to her, the percentage of THC present in the sample, be it charas or ganja or any mixture thereof, is not at all a relevant consideration for arriving at the conclusion as to whether the contraband is cannabis (hemp) or not. She also submitted that in the notification issued under Section 2(viia) and 2(xxiiia) prescribing the small and commercial quantities, cannabis and cannabis resin (charas, hashish) have been specifically shown at S.No.23 and the small and commercial quantities have been set at 100 gms and 1 kg, respectively. She further submitted that ganja has also been shown at S.No.55 and the small and commercial quantities specified are 1000 gms and 20 kgs, respectively. The learned counsel for the State submitted that THC has also been separately shown in the said notification at S.No.150 and the small and commercial quantities have been specified as 2 gms and 50 gms respectively. Consequently, the learned counsel for the State submitted, when the issue arises as to whether the narcotic drug is charas or ganja, the percentage content of THC is not at all relevant. Once the sample is identified as either charas or ganja, the entire quantity of the recovered contraband would have to be considered for the purposes of determining whether the recovery was of a small quantity, intermediate quantity or of a commercial quantity. The percentage of THC present in such recovery would not be a relevant or determinative factor.

9. To demonstrate that the percentage of THC present in contraband alleged to be charas or ganja is not at all a relevant factor for the purposes of the NDPS Act, she referred to the Recommended Methods for Testing Cannabis (Manual for National Narcotcs Laboratories) issued by the United Nations, New York in 1987. She submitted that there were enough techniques and methods available for identifying any contraband as cannabis without having to resort to determine the THC content of the contraband. Reliance was also placed on the United Nations Bulletin, Volume LVIII, Nos. 1 & 2, 2006 as well as to the Working Procedure Manual on Narcotics & Psychotropic Substances issued by the Directorate of Forensic Science, Ministry of Home Affairs, Government of India, New Delhi. She contended that through microscopic and macroscopic examination, the contraband could be tested so as to indicate whether it was cannabis or not. She also submitted that there were tests for differentiation between bhang, ganja and charas without resort to the quantification of the THC content in the contraband.

10. Lastly, the learned counsel for the State submitted that the decisions in Ansar Ahmed (supra) and E. Micheal Raj (supra) pertain to heroin and were not comparable with the case of cannabis. Heroin has been

shown at S.No.56 and its chemical name has been indicated to be diacetylmorphine. Therefore, in the said decisions, the percentage of diacetylmorphine in the purported contraband was found to be a relevant factor in determining the actual content of heroin / diacetylmorphine in the recovered substance. She submitted that, subsequently, the law has been changed by virtue of the notification dated 18.11.2009 bearing No.S.O. 2941(E) as a result of which, the entire quantity recovered would have to be considered for determining whether it was a small quantity or a commercial quantity. We would like to point out straightaway that we are not concerned with the said notification inasmuch as that relates to a subsequent period and, therefore, we are not expressing any opinion on the said notification dated 18.11.2009 or its effect in law. Furthermore, in any event, the case of diacetylmorphine (Heroin) stands on an entirely different footing and the decision in E. Micheal Raj (supra) would not be applicable in the case of cannabis.

11. Before we proceed to examine the provisions of the NDPS Act, we feel that the decisions of Single Judges of this court in Stephen Andreas Hofman (supra) and Krit Mehto (supra) need to be considered. In Stephen Andreas Hofman (supra) a black substance in transparent polythene capsules weighing 500 gms was recovered. Samples were taken on its being suspected to be Hashish and were sent to the Central Revenue Control Laboratory (CRCL) for further testing. The report indicated that the sample was in the form of a dark brown coloured mass and that it tested positive for charas. The quantitative test also disclosed the THC content to be 3.3%. The issue arose as to whether the case ought to have been tried by a magistrate or not inasmuch as recoveries of small quantities, entailing a lesser punishment, were triable by Magistrates. The argument on behalf of the prosecution was that since 3.3% THC was found in 500 gms of charas, it meant that the content was 16.5 gms. Since the small quantity specified for THC was 2 gms and the THC content by weight was 16.5 gms, the case was not triable by a magistrate. The court held that the complaint was under sections 20, 23 and 28 of the NDPS Act, which all deal with narcotic drugs, and not under section 22 which relates to psychotropic substances, the small quantity would have to be determined with reference to 'charas' (a narcotic drug) and not THC (a psychotropic substance). The small quantity for 'charas' was 100 gms and, therefore, it being more than 100 gms i.e. 500 gms, the case was triable by a magistrate. It is clear that the scope of inquiring into the question of percentage content of THC in charas was very limited. The state had not taken the stand that content of THC was irrelevant for determining the category of the recovery of charas, that is, whether it was a small or commercial quantity of charas. Again, in Krit Mehto (supra) the Court had merely directed that the sample be tested for the content of THC. Anyhow, those are single bench decisions and would have only a persuasive value, if at all, insofar as a Division Bench is concerned.

12. Section 2(iii) defines cannabis as follows:- "(iii) "(cannabis (hemp)" means

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom." Sections 2 (viia) and 2 (xxiiia) define commercial quantity and small quantity in the following manner:-

"(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette."

"(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette." Sections 2(xiv) and 2 (xxiii) define narcotic drug and psychotropic substance as under:-

"(xiv) "narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods."

" (xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule."

13. The table given in the notification issued under Section 2(viia) and 2(xxiiia), to the extent relevant for our purposes, is as follows:- SI Name of Narcotic Other non- Chemical Name Small Commerci No. Drug and proprietary name Quantity al Psychotropic (in gm.) Quantity Substance (in (International non- gm./kg. proprietary name (INN)

23. Cannabis and CHARAS, EXTRACTS and TINCTURES OF 100 1 Kg. cannabis resin HASHISH CANNABIS

55. Ganja 1000 20 kg.

56. Heroin Diacetylmorphine 5 250 gm.

150. Tetrahydrocannabinol The following isomers and their 2 50 gm. stereo chemical variants:

7,8,9,10-tetrahydro-6,6,9-trimethyl-3- pentyl-6H-dibenzo [b,d]pyran-l-ol (9R, 10aR)-8,9,10,10a-tetrahydro-

6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyranl-ol (6aR, 9R, 10aR)-

6a,9,10,10a-tetrahydro-6,6,9- trimethyl-3-pentyl-6H- dibenzo[b,d]pyran-l-ol (6aR, 10aR)-

6a,7,10,10a-tetrahydro-6,6,9- trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-l-ol 6a,7,8,9-tetrahydro-

6,6,9-tetrahydro-6,6,9-trimethyl-3- pentyl-6H-dibenso[b,d]pyran-l-ol

(6aR, 10aR)-6a,7,8,9,10, 10a- hexahydro-6,6-dimethyl-9-methylene

3-pentyl-6H-dibenzo[b,d]pyran-l-ol

The Schedule to the NDPS Act sets out a list of psychotropic substances as defined in Section 2(xxiii). S.No. 13 of the said list refers to Tetrahydrocannabinol (THC) which reads as under:- LIST OF PSYCHOTROIC SUBSTANCES

SI International non- Other non- Chemical Name No. proprietary names proprietary names

13. TETRAHYDROCA NNABINOL

1-[1-(2)-Thienyl) cyclohexyl] piperidine 7,8,9,10- tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo

[b,d]pyran-I-OI] (9R, 10aR)-8,9,10,10a-tetrahydro- 6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-I-O] (6aR, 9R-10aR)-6a,9,10,10a-tetrahydro-6,6,9-

trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-I-CI. (6aR, 10aR)-6a,7,10. 10a-tetrahydro-6,6,9-trimethyl-3- pentyl-6H-dibenzo [b,d]pyran-I-OI (6aR, 10aR)- 6a,7,8,10, 10a-hexahydro 6,6-dimethyl-I-9- methylene-3-pentyl I-6H-dibenzo[b,d]pyran-I-OI

14. From the above provisions, it is apparent that cannabis is a narcotic drug under Section 2(xiv). On the other hand, THC is a psychotropic substance as it finds mention at S.No.13 in the list given in the Schedule to the NDPS Act. Thus, while cannabis contains THC and THC forms an important constituent of cannabis, THC by itself is a psychotropic substance and is separately regarded under the NDPS Act. This is important because the nature of the offence and the punishment prescribed for the offence depends on whether a substance is a narcotic drug or a psychotropic substance. The punishment for contravention in relation to cannabis plant is specifically given in Section 20 of the NDPS Act. On the other hand, the punishment for contravention in relation to psychotropic substances is provided in Section 22 of the NDPS Act. Consequently, it would make a

material difference as to whether the alleged contraband is cannabis (a narcotic drug) or THC (a psychotropic substance). The question that requires our decision is not in the context of the percentage of THC as a psychotropic substance, but, the percentage of THC in charas (cannabis), which is a narcotic drug. Thus, the classification of the recovery as a small, intermediate or commercial quantity has to be done from the standpoint of charas (a narcotic drug) and not from the standpoint of THC (a psychotropic substance).

15. The United Nations Bulletin on Narcotics, 1985, which had been strongly relied upon by the learned counsel for the petitioner, only indicates that determination of the THC content is generally believed to be the most satisfactory indicator of the "quality" of the product and that the concentration of THC is used to calculate the quantity of cannabis or cannabis resin used in liquid cannabis (hashish oil). The said bulletin also indicates that the concentration of THC in liquid cannabis and cannabis resin differs across countries. It is indicated that the optimum THC level is approximately 30 per cent by weight, although the rare Indian or Nepalese sample has been found to contain 50 to 60 per cent. According to us, the 1985 Bulletin of Narcotics merely indicates that the content of THC determines the quality of the product. It does not follow that the percentage quantity of THC present in the amount recovered, translated into weight would be the extent of the contraband present in the recovered quantity.

16. In the Recommended Methods for Testing Cannabis issued by the United Nations, 1987, it is clearly stated that:- "Because cannabis and cannabis resin are plant material it is mandatory that the analyst includes macroscopic and / or microscopic examination of the material as part of the testing protocol. The choice of the two other techniques or more, is left to the discretion of the forensic chemist." In the same document issued by the United Nations, the microscopic characteristics of cannabis have been described as under:- "2. Microscopic characteristics The very abundant trichomes which are present on the surface of the fruiting and flowering tops of cannabis are the most characteristic features to be found in the microscopic examination of cannabis products. (Figure 2)

The said figure 2 referred to above is as under:- Figure 2

The document further provides:

"The diagram shows these various features, as follows:- BAIL APPLN No.2330/08 Page No.14 of 20 A. Non glandular hairs (trichomes), numerous, unicellular, rigid, curved, with a slender pointed apex and an enlarged base, usually contaiing a cystolith but frequently broken and the cystolith freed (especially in cannabis resin) (NC. TR. And C.TR.)

B. The glandular thrichomes occur in three forms: sessile glands with one-celled stalk (generally on lower epidermis) (S.G.) long multicellular stalk form (generally on the bracteoles surrounding the female flowers) (M.G.TR.).

The head in both forms is globular consisting of eight to sixteen cells. It is frequently detached (especially in cannabis resin). Small glandular trichome, with one-celled stalk (G.TR.)"

17. The United Nations Bulletin on Narcotics, 2006 referred to above, reveals that several drug products can be produced from the cannabis plant, falling into three main categories:-

1) "Herbal cannabis": the leaves and flowers of the plant; 2) "Cannabis resin": the pressed secretions of the plant, commonly referred to as "hashish" in the West or "charas" in India;

3) "Cannabis oil".

The said bulletin states that cannabis contains over 400 chemicals, of which more than 60 are chemically unique and are collectively referred to as cannabinoids. Delta-9 THC is believed to be responsible for most of the psychoactive effects of cannabis, although related chemicals are believed also to play a role. It is further stated that the precise way in which the various components of cannabis interact and influence the

physiological and subjective effects of cannabis is a topic of ongoing research. It is further stated that much of the THC in a plant is in acid form or in a less potent variant and the application of heat is essential to make all of the THC accessible. Furthermore, chemically synthesized delta-9 THC is known as dronabinol (marketed as Marinol). The said bulletin further states that one of the most important secondary chemicals is cannabidiol (CBD), the biosynthetic precursor of THC, which converts to THC as the plant matures. It is further stated in the said bulletin on Narcotics, 2006 that THC degrades over time, so the age of the sample and the conditions under which it was stored are highly relevant.

18. The working Procedure Manual of Narcotics issued by the Directorate of Forensic Science, Government of India, New Delhi deals with cannabis in Section 5 of the said Manual. Section 5.5.1 deals with microscopic examination and its provisions are virtually identical to the examination method given in the Recommended Methods for Testing Cannabis by the United Nations in 1987. Apart from microscopic examination, the Working Procedure Manual also prescribes colour tests, which include Fast Blue B Salt Test employing two different methods: Filter Paper Method and Test Tube Method. The Filter Paper Method prescribed in 5.5.2.1 of the Manual is as under:-

"5.5.2.1 Filer Paper Method[1] Fold two filter papers to form fluted funnels. Keep these paper funnels on each other. Place a small amount of suspected sample into the corner of the upper funnel of the paper and add two drops of solution-1. Allow the liquid to penetrate to the lower filter paper funnel. Discard the upper filter paper and dry the lower filter paper. Now add a very small amount of the solid fast Blue B reagent to this lower paper and add two drops of solution-2. A purple-red coloured stain on the filter paper indicates the presence of cannabis product. Reagents:

Solid reagent: Dilute & mix fast blue B salt with anhydrous sodium sulphate in the ratio of 1:100 Solution 1: Petroleum ether

Solution 2: A 10% w/w aqueous solution of sodium bicarbonate" (underlining added)

The Test Tube Method specified in 5.5.2.2 of the said Manual is as under:- "5.5.2.2 Test Tube Method [1]

Take a small amount of suspected material in a test tube; add to it a very small amount of the solid reagent and 1 ml of solution 1. Shake well for one minute and add 1 ml of solution 2. Shake the test tube for two minutes and allow this test tube to stand for 2 minutes. A purple red colour in the lower layer of chloroform indicates the positive result of the presence of cannabis product.

Reagents:

Solid reagent: Dilute & mix fast blue B salt with anhydrous sodium sulphate in the ratio of 2.5:100 Solution 1: Chloroform

Solution 2: o.1N aqueous sodium hydroxide solution." (underlining added)

19. Apart from this, the Duquenois-Levine Test has been indicated in paragraph 5.5.2.3 of the said Manual which reads as under:- "5.5.2.3 Duquenois-Levine Test [1] Take a small amount of suspected material in a test tube and shake with 2 ml reagent for 1 minute, add 2 ml of conc. HCl and shake it well. Allow it to stand for 10 minutes and then add 2 ml of chloroform. Appearance of violet colour in chloroform layer (lower layer) indicates the presence of cannabis.

Reagent:- 5 drops of acctaldehyde and 0.4gms of vanillin are dissolved in 20 ml of 95% ethanol." (underlining added)

An alternative test has been prescribed under section 5.5.2.4 to indicate the presence of tetrahydrocannabinol (THC) in the following manner:- "5.5.2.4 Alternate test [2] Extract the sample with petroleum ether. Filter and evaporate to dryness. Add 2 ml. of Duquenois reagent to dissolve the residue add

2ml. conc. HCl. Shake and keep for 10 min. Transfer the solution into a test tube add 2ml. of Chloroform and shake. Purple colour in the chloroform layer indicates the tetrahydrocannabinols.

Reagent:- 5 drops of acetaldehyde and 0.4gms of vanillin are dissolved in 20 ml of 95% ethanol." (underlining added)

The Manual, thereafter, prescribes a test for differentiation between bhang, ganja and charas as under:-

"5.5.2.5 Test for differentiation between Bhang, Ganja and Charas [3] Extract the suspected material of cannabis in ethanol. Take a drop of extract in a cavity of a spot tile or in a micro tube, add 2 drops of chromogenic reagent 1 and mix thoroughly followed by addition of 2 drops of reagent 2. Bhang gives green colour, ganja gives blue colour while charas gives violet colour.

Reagent 1: p-Aminophenol (1mg) in ethanol (10 ml) Reagent 2: Caustic potash (1g) in distilled water (10 ml)" (underlining added)

20. Other tests, including thin layer chromatography, gas liquid chromatography, high performance liquid chromatography and mass spectrometry techniques have also been specified. But, from the above testing procedures indicated in the Working Procedure Manual, it is clear that the presence of cannabis can be determined by simple microscopic examination and the various colour tests which clearly reveal the presence of cannabis. It is not at all a scientific requirement to determine the content of THC in a sample of contraband to arrive at the conclusion as to whether the contraband is cannabis or not. In fact, a simple colour test also differentiates the type of cannabis, namely, whether it is charas or ganja or bang (which has not been specifically included as cannabis under the NDPS Act). There is, therefore, no necessity of determining the percentage content of THC in a sample of cannabis, be it charas or ganja. Neither the NDPS Act nor the said notification prescribing small and commercial quantities make any reference to the purity of charas or ganja. Once the contraband has been determined to indicate cannabis, whether in the form of charas or in the form of ganja or as a mixture containing either of the two, with or without other neutral substances, the entire weight of the contraband would have to be considered for determining whether the recovery was of a small quantity, intermediate quantity or a commercial quantity.

21. Therefore, our answer to the question is that the percentage of THC in a sample of charas by itself cannot be determinative of the purity of the sample. Furthermore, a test resulting in the quantification of the percentage content of THC is neither relevant nor necessary for the purposes of considering the grant of bail or of awarding sentence under the NDPS Act. We may point out that in the question referred to us, Section 21 of the NDPS Act has been mentioned, whereas the context is in respect of an alleged recovery of charas. We have mentioned above that Section 21 deals with psychotropic substances and has nothing to do with the punishment in relation to cannabis (charas, ganja or a mixture thereof) and cannabis plants, which are specifically dealt with under Section 20 of the NDPS Act. Therefore, we have taken the reference to Section 21, in the question referred to us as being a reference to Section 20 of the NDPS Act.

22. Having answered the question which was referred to us, the matter should now be placed before the appropriate Bench for considering the question of grant of bail.