

## Anti-Doping Disciplinary Panel

J.L.N Stadium, Gate No. 10 Hall No.103  
1<sup>st</sup> Floor, Lodhi Road, New Delhi 110 003  
Telefax : 011-24368274

To,

Date: 15.09.2022

Mr. Ashutosh Mehta  
R/o Panchsheel 3-D/213,  
2<sup>nd</sup> Floor, L.S Raheja Road,  
Malad, East Mumbai,  
Maharashtra- 400097

**Subj: Decision of the Anti-Doping Disciplinary Panel Case No.- 211.ADDP.2022**

**NADA Vs. Mr. Ashutosh Mehta**

The order containing the decision of the Anti-Doping Disciplinary Panel dated 14.09.2022 in respect of final hearing of the above case held on 07.09.2022 is enclosed.

Please note that according to Article 13.2.2 of Anti-Doping Rules of NADA 2021, **the time to file an appeal to the National Anti-Doping Appeal Panel shall be twenty one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti-Doping Rules 2021 may be downloaded from NADA website at the following link:-[www.nadaindia.org/en/anti-doping-rule-of-nada](http://www.nadaindia.org/en/anti-doping-rule-of-nada)

The receipt of this communication may be acknowledged.

Encl: 15 sheets.

  
(Yasir Arafat)  
Law Officer

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary Panel for information and action deemed necessary:

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. Federation International de Football Association, FIFA – Stresse 20, P.O Box 8044.
3. The General Secretary, All India Football Federation, Football House Sector 19, Phase 1, Dwarka, New Delhi.
4. National Anti-Doping Agency, J.L.N Stadium, Gate No. 10 Hall No.103 , Lodhi Road, New Delhi 110003.

## BEFORE THE ANTI DOPING DISCIPLINARY PANEL

In the matter of Mr. Ashutosh Mehta for violation of Article 2.1 & 2.2  
of National Anti-Doping Agency Anti-Doping Rules, 2021

**Quorum:** Mr. Chaitanya Mahajan, Chairman, ADDP  
Dr. D.S Arya, Medical Member, ADDP  
Mr. Jagbir Singh, Sports Member, ADDP

**Present:** Mr. Yasir Arafat, NADA  
Mr. Achyuth Jayagopal, Counsel for the Athlete  
Mr. Ashutosh Mehta, Athlete

### JUDGMENT

14.09.2022

1. The present proceedings before this Anti-Doping Disciplinary Panel (“**this panel**”) emanate from the Adverse Analytical Finding (“**AAF**”) against Mr. Ashutosh Mehta (“**the athlete**”). The athlete is a Football Player and his date of birth as stated by him in the Dope Control Form (“**DCF**”), happens to be **21.02.1991**.
2. Brief Facts of the case are as follows:
  - 2.1 On 8<sup>th</sup> of February, 2022 at 22:16, a NADA *Doping Control Officer* (“**DCO**”) collected a Urine Sample from the Athlete during “Hero India Super League 2021, Goa”.
  - 2.2 The athlete was assisted by the DCO and the *Sample* was split into two separate bottles, Sample A with reference number A 6491094 (the “*A sample*”) and Sample B with reference number B 6491095 (the “*B sample*”).
  - 2.3 The *samples* were then transported to the World Anti-Doping Agency (“*WADA*”) - accredited Laboratory, National Dope Testing Lab, Delhi (the “*Laboratory*”). The said Laboratory received the sample on **08.02.2022** and

Sample A was analyzed as per the procedure set out in WADA's International Standard for Laboratories.

2.4 The results of the analysis of 'A' sample showed *Adverse Analytical Finding* ("AAF"), the relevant details from the report are reproduced herein:

*"The concentration of morphine in LC 220132 is 4.06 ug/ml. This exceeds the DL for morphine of 1.30 ug/ml. The relative combined standard uncertainty estimated at threshold is 9%. This result constitutes Adverse Analytical Finding of Morphine (Narcotics).*

2.5 The substance which was confirmed by the Laboratory is prohibited under S7 of the WADA Prohibited List "Narcotics" under the class "Specified Substance". It is imperative to note that no Therapeutic Use Exemption ("TUE") which can justify the substance in Athlete's sample was found on NADA's record.

2.6 Based on the above-mentioned facts a Notice of Charge with optional *Provisional Suspension (specified substance)* under the National Anti-Doping Agency Anti-Doping Rules, 2021 ("NADA ADR") was issued on **25.03.2022**. The notice charged the Athlete with the commission of Anti-Doping rule violation ("ADRV") for the presence of **Narcotics/Morphine**.

2.7 The notice stated the rights of the athlete and the consequences for violation of NADA ADR by committing ADRV. Relevant paragraph from the Notice of Charge, read, inter alia as follows:

**5. Optional Provisional Suspension**

*5.1 Pursuant to Article 7.4.2 ADR, you are NOT provisionally suspended pending the resolution of your case and may continue to participate in Competitions, Events and other activities organized,*

*convened, authorized or recognized by any Signatory, Signatory's member organization, or a club or other member organization of a Signatory's member, or in Competitions authorized or organized by any professional league or any international- or national-level Event organization or any elite or national-level sporting activity funded by a governmental agency.*

It was further mentioned that:

*"5.3 Article 7.4.4 allows you to voluntarily accept a Provisional Suspension. If you elect to do so and thereafter respect this Provisional Suspension against any period of Ineligibility that may ultimately be imposed upon you. If you accept to do so, please complete the attached form and send it to NADA, and Athletic Federation of India."*

NADA also informed the athlete about his right for B Sample Analysis and the right to obtain the A and B Sample Laboratory documentation package.

The relevant paragraph is reproduced herein:

***"7. Optional B Sample analysis***

*7.1 You have the right to have your B Sample analyzed to confirm (or otherwise) the AAF made in relation to your A Sample and NADA office may be intimated in this regard within 7 working days after receipt of this notice.*

*7.3 Alternatively you may waive your right to a B Sample analysis. In those circumstances, you will be deemed to have accepted the A Sample result, but you may still challenge the matter at a hearing if you wish subject to article 8.3."*

2.8 In response to the above notice, the athlete on **29.03.2022** sent a letter addressing NADA stating that he wants to exercise his right to have the B sample analyzed, he also requested for copies of the A and B sample Laboratory Documentation Package (“LDP”).

2.9 The Athlete on **02.05.2022**, through his counsel, sent a letter addressing NADA wherein he expressed his willingness to provide Substantial Assistance as stipulated in Article 10.7.1 of the NADA ADR. Highlights from the letter are as follows:

- a) That the letter is with the intention to provide substantial assistance.
- b) That the athlete is a footballer and has represented India at an International level, the present matter arises from the Athlete being served the Notice of Charge. His sample was collected in-competition during the “Indian Super League”
- c) The athlete did not have the intention to consume narcotic substance, through the substantial assistance clause he intended to report a teammate of his who allegedly administered him with Opium, a source of Morphine in the form of ‘Kaala Daba’ (literally translating to ‘Black Medicine’) in pretext of it being an Ayurvedic Medicine.
- d) That he came to know of the fact later on that in the states of Rajasthan and Punjab, opium is often consumed candidly as part of native medicine to aid uneasiness and pain.
- e) He also stated that he is in possession of various call recordings and witness statements that indicate at his innocence. He wished to share the same.

f) The athlete requested NADA not to disclose the news of his Anti-doping rule violation or suspend him provisionally until a hearing panel is formed. The athlete was willing to forego any credits that may be accrued by his provisional suspension to bring out the truth and to avoid any such instance where said teammate may provide substance like 'Kala Daba' to unassuming victims who had no intention to cheat or enhance their performance, as was the case with the Athlete.

2.10 As requested by the Athlete, 'B' sample analysis was done at National Dope Testing Laboratory (NDTL) on **04.05.2022** in the presence of athlete's appointed representative, the analysis **confirmed AAF** via report dated **15.06.2022**. LDP was also shared with the athlete as per his request via letter dated **29.03.2022**.

2.11 On **24.06.2022** NADA sent a follow up notice to the earlier notice dated **25.03.2022** stating the rights of the athlete and proposed consequences of *ADRV*, subsequently on **24.06.2022** itself the Athlete sent the letter of **Acceptance of Provisional Suspension** to NADA.

3. It is pertinent to mention that after each report a **second opinion** was taken from a WADA- accredited laboratory i.e. Swiss Laboratory for Doping Analysis, the said lab confirmed the finding of *AAF* in both the reports pertaining to Samples A & B.
4. The matter was placed before the Anti-Doping Disciplinary Panel. The Athlete filed his Written Submissions on **27.07.2022** before the panel.

5. We have heard the arguments advanced on behalf of the Athlete by their counsel, arguments by NADA and perused the available material on record shared with us.
6. As per Article 2.1.1 of NADA ADR, 2021, it is the personal duty of each athlete to ensure that no *Prohibited Substance* enters their body. Athletes are fully responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an antidoping rule violation under Article 2.1.
7. It should be noted that as per Article 2.1.1 of NADA ADR, 2021, It is Athlete's personal duty to ensure that no Prohibited Substance enters their bodies and they are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample Analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.
8. As per Article 2.1.2 of the NADA ADR, 2021 sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following:

*“presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A*

*Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample."*

9. Article 3 of the NADA ADR, 2021 stipulates that, the burden of proof of *ADRV* rests with NADA. To prove the same NADA has placed on record the *AAF* Test report for A & B Samples issued by WADA-Accredited Laboratory *NDTL* which show the presence of Narcotics/Morphine which is prohibited under *S7* of the WADA Prohibited List "*Narcotics*" under the class "*Specified Substance*."
10. As per Article 4.2.2 of the NADA ADR, 2021, "*Specified Substances*" or "*Specified Methods*" for purposes of the application of Article 10, all Prohibited Substances shall be Specified Substances except as identified on the Prohibited List. No Prohibited Method shall be a Specified Method unless it is specifically identified as a Specified Method on the Prohibited List.
11. It is here reiterated that as per Article 2.1.1 of NADR, it is the personal duty of the athlete to make sure that no Prohibited substance enters his body. The athlete has clearly failed to perform his duty towards himself and in turn committed an *ADRV*, the athlete should have exercised extra caution before ingesting a substance unknown to him.
12. The panel is not here to question the recognition of a substance as "*prohibited substance*" or its nature, the panel can only adjudicate based on the findings by the *AAF* report and NADR, WADA Rules. The reports of A & B sample analysis clearly demonstrate the presence of a substance which is under

WADA's prohibited list. The submission by the athlete that he inadvertently consumed *Opium* which happens to have *Morphine* as one of its alkaloids cannot be considered, as the athlete, through his Written Submissions and oral statements during the *ADDP* hearing stated that he was not aware of the chemical composition of "Kala Daba" in turn he assumed it to be some kind of an Ayurvedic/Herbal Medicine.

13. Appendix 1 of the NADR, 2021 defines "*in-competition*" as the period commencing at 11:59 p.m. on the day before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition.

14. Definition and Interpretation clause of the FIFA Anti-Doping Regulations, 2021 define *in-competition* as following:

*"34. In-Competition: the period commencing at 23:59 on the day before a Match in which the Player is scheduled to participate through to the end of said Match and including the Sample collection process relating to said Match."*

15. The athlete submits that his consumption took place at late hours of 07.02.2022, i.e. one day before "*the match*" on 08.02.2022. It is pertinent to mention here that the sample was collected on 08.02.2022 i.e. the day of the match.

16. A simple perusal of NADR and FIFA Anti-Doping Regulations, 2021 makes it clear that the athlete was very well within the purview of "*in-competition*". The submission that the consumption was outside competition is not consistent with the above-mentioned rules. (ref. para 23 and 24)

17. It should also be noted that the athlete through his letter dated **02.05.2022** addressing NADA with the intention to provide substantial assistance

mentioned the violation as 'in-competition'. The letter was sent by his counsel on his behalf.

18. The athlete further submits in his written submissions that he was aware of the fact that he was not part of the starting eleven and was intended to be an unused substitute, this statement is contradictory to the oral submission made by the Athlete during the *ADDP* hearing. The athlete orally admitted during the hearing **that he was not aware of the starting eleven.** Here, regardless of the fact whether the substance was taken to enhance the performance or not, it is clear that the written submission by the athlete:

*"the inadvertent consumption of opium cannot be viewed as an attempt to enhance performance on behalf of the Athlete" just because he knew he was not going to be a part of starting eleven*

**cannot be sustained as the athlete made it clear during the hearing that he was not aware of the starting eleven.**

19. The athlete seeks the application of Article 10.2.4.1 of NADR, it should be noted here that the said rule is applicable in cases of "*out-of-competition*", it is established that the ingestion in this case was "*in-competition*". Hence, the said rule is not applicable here.

20. The panel finds it appropriate to mention here that as per Article 10.2, the period of ineligibility for a violation of Article 2.1 of NADR is four (4) years subject to the following reductions:

- a. Article 10.5 (No fault or Negligence)
- b. Article 10.6 (No significant fault or Negligence)
- c. Article 10.7 (For reasons other than fault)

21. The athlete seeks the applicability of Articles 10.6, 10.6.1 & 10.6.1.1, the same are reproduced herein:

*“10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence”*

*“10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6. All reductions under Article 10.6.1 are mutually exclusive and not cumulative.”*

*“10.6.1.1 Specified Substances or Specified Methods Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.”*

22. ‘Fault’ and ‘No Significant Fault or Negligence’ are defined under Appendix 1 of the NADR, the same read as follows:

*“Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete’s or other Person’s degree of Fault include, for example, the Athlete’s or other Person’s experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In*

*assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2."*

*"No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system."*

23. In **CAS 2008/A/1668 World Anti-Doping Agency (WADA) v. National Olympic Committee & Sports Confederation of Denmark & Dansk Boldspil-Union (DBU) & Jesper Münsberg**, the panel observed the following:

*"in order to benefit from the elimination or reduction of the sanction, the Player must fulfil two cumulative conditions, i.e. establish how the specified substance (in this case salbutamol) entered his body and establish the absence of intent to enhance his sporting performance. Each of the two foregoing conditions is subject to a different standard of proof."*

24. Based on the submission made by the athlete the panel believes that it is clear that he was in discomfort and had accepted 'Kala Daba', the substance through which the '*prohibited substance*' entered his body.
25. After establishing how the substance entered his body the second condition i.e. 'the absence of intent to enhance sporting performance' needs to be established. Also, it is essential to ascertain the 'degree of fault' to determine the penalty by the Panel.
26. Determination of 'degree of fault' has been comprehensively discussed in **CAS 2015/A/4233 World Anti-Doping Agency (WADA) v. Martin Johnsrud Sundby & Fédération Internationale de Ski (FIS)**, wherein the learned panel observed the following:

*"The Panel notes that an impressive body of jurisprudence has defined the circumstances relevant to the measurement of an athlete's fault, and translated them into the determination of a proper sanction, chiefly in the context of disputes relating to the use of "contaminated products" (such as food supplements), but also in cases where medicines were taken in a therapeutic context (broadly defined) without a TUE. Also, in this arbitration, the Parties have drawn the Panel's attention to specific decisions. The Panel agrees that precedents in terms of the approach in principle provide helpful guidance. However, the Panel underlines that each case must be decided on its own facts and that "although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport" (CAS 2011/A/2518 § 10.23 of the award).*

*At the same time, the Panel notes that in CAS 2013/A/3327 & 3335 the Panel summarized, based on a review of CAS precedents, some principles applicable to the determination of the length of the sanction when Article 10.4 WADC (or provisions corresponding thereto) applies. More specifically, the Panel recognised the following degrees of fault:*

- i. significant degree of or considerable fault*
- ii. normal degree of fault*
- iii. light degree of fault.”*

*“The holding in CAS 2013/A/3327 & 3335 was then applied in other CAS decisions, and was recently adopted in CAS 2016/A/4371, in the context of the 2015 edition of the WADC.*

*This Panel agrees with CAS 2013/A/3327 & 3335: in order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. The objective element should be foremost in determining into which of the three relevant categories a particular case falls. The subjective element can then be used to move a particular athlete up or down within that category.”*

27. Based on the facts and circumstances in the present case, it appears to the panel that the athlete was in discomfort and body pain hence accepted ‘Kala Daba’ to ameliorate the same, the panel also believes that it was not consumed with the

intention to enhance his performance. Hence, the panel is of the view that the anti-doping violation was unintentional and the provisions of Article 10.2.2 are attracted.

**28. Substantial Assistance in Discovering or Establishing Code Violations**

under Article 10.7.1 of the NADR **cannot be applied to this case as the assistance provided was inconsequential**, the panel was made aware that the ‘teammate’ reported by the athlete came out to be negative. However, the athlete still has the chance to approach NADA and/or appropriate authorities prior to the decision by the appellate panel under Article 13, in case an appeal is made. Hence, the case law cited in the Written Submission (*Eid Mohamed Al-Suweidi v. WADA and Asli Cakir Alptekin v. WADA*) on behalf of the athlete is not applicable in the present case.

29. It should be noted that the athlete should have exercised caution and utmost care before ingesting any substance in his body, which the athlete clearly failed to do, it should also be noted that the violation was ‘in competition’ and the athlete switched his stance on “knowledge about the team selection” during the *ADDP* hearing.

30. In view of the Facts, Circumstances, Precedents and Rules mentioned above, it is held that the Athlete has violated Article 2.1 and 2.2 of the NADA ADR, 2021, furthermore, the Panel is of the view that the anti-doping violation was unintentional and the provisions of Article 10.2.2 are attracted. **We accordingly hold that the Athlete is liable for a period of ineligibility of 2 years.**

31. We also direct that under Article 10.10 all other competitive results obtained by the athlete from the date of sample collection i.e., 08.02.2022 shall be

disqualified all resulting consequences including forfeiture of medals, points and prizes.

32. The athlete is entitled for the credit period of provisional suspension already undergone under Article 10.13.2. **The panel hereby directs that the Athlete be given credit period of his provisional suspension** which he had already undergone for calculating his total period of ineligibility of two (02) years.

The matter is disposed of, accordingly.

CHAITANYA Digitally signed by  
MAHAJAN Date: 2022.09.14  
10:25:06 +05'30'  
Mr. Chaitanya Mahajan  
(Chairman)

  
Dr. D.S Arya  
(Medical Member)

  
Mr. Jagbir Singh  
(Sports Member)