



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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BAIL UNDER NDPS ACT: EXCEPTIONAL RULE OR FUNDAMENTAL RIGHT?

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I. INTRODUCTION

The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, represents India's legislative commitment to curbing the menace of drug trafficking and substance abuse. While the objectives of the Act are undoubtedly laudable, its stringent provisions have invited intense constitutional scrutiny, particularly with regard to bail. Section 37 of the NDPS Act makes the grant of bail exceptionally difficult for offences involving commercial quantities of contraband, raising concerns about its compatibility with the right to personal liberty under Article 21 of the Constitution. This article critically examines whether bail under the NDPS Act remains an extraordinary remedy or whether recent judicial interpretations are gradually infusing a fundamental rights perspective into its application.

II. THE LEGISLATIVE FRAMEWORK: SECTION 37 AND ITS RIGIDITY

Section 37 of the NDPS Act begins with a non obstante clause, overriding the general provisions of the Code of Criminal Procedure. It mandates that for offences involving commercial quantities:

1. The Public Prosecutor must be given an opportunity to oppose the bail application.

2. The court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail.

These twin conditions impose a heavy burden on the accused and create a statutory presumption against bail, fundamentally altering the traditional jurisprudence where bail is the norm and jail the exception.

III. JUDICIAL INTERPRETATION: SECTION 37 AS A BARRIER TO LIBERTY

The Supreme Court in *State of Kerala v. Rajesh (2020)* reaffirmed that the rigour of Section 37 cannot be diluted, and bail under the NDPS Act cannot be granted casually. The Court emphasized the mandatory nature of the twin conditions and cautioned lower courts against bypassing the statutory mandate.

Similarly, in *Union of India v. Shiv Shanker Kesari (2007)*, the apex court held that satisfaction of both conditions is sine qua non for grant of bail. The Court stressed that mere lapse of time or delay in trial cannot be sufficient to override Section 37, unless accompanied by compelling grounds.

In *State of Meghalaya v. Lalrintluanga Sailo (2024)*, the Supreme Court reiterated this strict stance by cancelling the bail of an HIV-positive accused found in possession of a commercial quantity of heroin. The Court held that serious health conditions alone cannot justify bail when the offence involves grave societal harm.

IV. Section 37 vs. Right to Personal Liberty: The Growing Tension

Despite its rigidity, courts have begun interpreting Section 37 in light of Article 21. A notable instance is *Abdul Rab v. Narcotics Control Bureau (2025)*, where the Delhi High Court granted bail to the accused in the absence of substantive evidence. The Court observed that mere disclosure statements of co-accused without corroboration cannot meet the threshold of "reasonable grounds" under Section 37. This marked a significant shift, recognizing that constitutional liberties cannot be overridden by statutory presumptions when the evidence is weak.

In *Subhas Yadav v. State of West Bengal (2023)*, the Calcutta High Court highlighted that statutory bail under Section 167(2) CrPC remains available under the NDPS regime, provided the accused applies for it in a timely manner. The Court held that such a right, though procedural, stems from the overarching guarantee of personal liberty.

V. Medical Grounds & Bail: Humanitarian Exception or Not?

Courts have generally been reluctant to dilute Section 37 on humanitarian grounds alone. In *Lalrintluanga Sailo (supra)*, the Supreme Court held that an HIV-positive status did not constitute a sufficient ground for bail in a case involving a large commercial quantity of drugs. This decision underscores the judiciary's view that individual health considerations must yield to public interest in narcotics cases, unless the denial of bail amounts to inhuman treatment.

VI. Procedural Lapses as a Ground for Bail: A Limited Window

Judicial precedents have established that procedural violations under the NDPS Act may offer a valid defence against the presumption under Section 37. In *Tofan Singh v. State of Tamil Nadu (2020)*, the Supreme Court held that confessions recorded under Section 67 are inadmissible as evidence, thereby weakening the prosecution's case in several instances.

Failure to comply with mandatory procedural safeguards, such as Section 50 (right to be searched in presence of a gazetted officer or magistrate), has been recognized as a substantive ground for bail, as it directly affects the fairness of the investigation.

VII. Is Bail Under NDPS Becoming a Fundamental Right?

The landmark principle that bail is the rule and jail the exception, laid down in *Gurbaksh Singh Sibbia v. State of Punjab*, appears subdued under the NDPS Act.[7] However, courts are increasingly adopting a rights-based approach, emphasizing that statutory rigour must not eclipse constitutional values. The evolving jurisprudence suggests a cautious yet evident shift towards harmonizing Section 37 with Article 21.

VIII. Conclusion

Bail under the NDPS Act continues to be an exceptional rule, particularly in cases involving commercial quantity of contraband. However, judicial pronouncements in recent years reveal a nuanced approach wherein procedural lapses, weak evidence, and delayed trials are being given due consideration, and constitutional rights are gradually reclaiming space within this harsh legal landscape. The courts' increasing willingness to scrutinize the prosecution's case at the pre-trial stage signals a move toward restoring the balance between state interest and personal liberty. In this evolving context, while Section 37 remains formidable, it is no longer an insurmountable barrier. The judiciary is progressively reconciling the legislative object of deterrence with the constitutional imperative of due process. Whether this trajectory will lead to a re-characterization of bail under the NDPS Act as a fundamental right remains to be seen, but the current trend undoubtedly marks the beginning of a more balanced and humane jurisprudence.