

Bail under the Narcotic Drugs and Psychotropic Substances Act, 1985: A Critical Analysis of Section 37 and the Right to Personal Liberty

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Abstract: *The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) constitutes India's principal legislative framework for regulating narcotic drugs, psychotropic substances, and combating illicit trafficking activities. Enacted in response to the increasing threat posed by drug abuse and organized drug-related crimes, the legislation adopts a stringent approach towards investigation, prosecution, punishment, and the grant of bail. Among its most significant provisions is Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which imposes rigorous conditions on the grant of bail in cases involving serious offences, particularly those relating to commercial quantities of narcotic drugs and psychotropic substances. Unlike the general principles governing bail under criminal law, Section 37 substantially restricts judicial discretion by requiring courts to satisfy themselves that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and is unlikely to commit any offence while on bail. The stringent bail regime under the Narcotic Drugs and Psychotropic Substances Act, 1985 often results in prolonged pre-trial detention, raising concerns about the presumption of innocence, the right to a fair trial, and the protection of personal liberty guaranteed under Article 21 of the Constitution of India.*

This article critically examines the legislative intent and legal framework of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, analyses its judicial interpretation through significant case law, and evaluates the continuing tension between stringent statutory restrictions on bail and the constitutional commitment to personal liberty. The article further explores whether the existing bail regime under the NDPS Act achieves an appropriate balance between societal interests and the fundamental rights of accused persons within the Indian criminal justice system.

Keywords: Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37; Bail; Personal Liberty; Article 21; Presumption of Innocence; Criminal Justice System; Drug Trafficking; Constitutional Rights

I. INTRODUCTION

Bail serves as an essential safeguard within criminal jurisprudence and reflects the principle that every accused person is presumed innocent until proven guilty. The grant of bail protects individuals from unnecessary deprivation of liberty while simultaneously ensuring their appearance during investigation and trial. Under ordinary criminal law, courts generally exercise broad discretion while considering bail applications, taking into account factors such as the gravity of the offence, the possibility of absconding, and the likelihood of tampering with evidence.¹

However, the legal position is substantially different under the Narcotic Drugs and Psychotropic Substances Act, 1985. Enacted in response to increasing concerns regarding drug abuse and illicit trafficking, the Act introduced a comprehensive framework for regulating narcotic drugs and psychotropic substances. Parliament considered drug trafficking to be a unique form of criminal activity capable of causing widespread social harm and therefore adopted a stricter approach toward offenders.

Consequently, Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 imposes rigorous conditions that significantly restrict the power of courts to grant bail. These restrictions represent a deliberate legislative departure from ordinary principles governing pre-trial release. While the provision aims to strengthen the fight against narcotics-



related offences, its operation frequently raises concerns regarding the protection of individual liberty and the constitutional rights of accused persons.²

II. LEGISLATIVE FRAMEWORK OF SECTION 37 OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

The bail regime established under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is among the most stringent in Indian criminal law. The provision declares specified offences under the Act to be cognizable and non-bailable and places substantial limitations upon judicial discretion.

Section 37(1)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 provides that a person accused of offences involving commercial quantities of narcotic drugs or psychotropic substances shall not be released on bail unless two mandatory requirements are satisfied. First, the Public Prosecutor must be afforded an opportunity to oppose the application. Second, where the application is opposed, the court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and is unlikely to commit any offence while on bail.³

These statutory requirements, commonly referred to as the "twin conditions," create a presumption against the grant of bail. Unlike ordinary criminal proceedings, where courts primarily assess the necessity of custody, Section 37 requires a preliminary evaluation of the merits of the prosecution case. This significantly increases the burden placed upon the accused and narrows the scope of judicial discretion.

The stringent framework reflects the legislature's perception that offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 often involve organized criminal networks operating across state and international boundaries. Parliament therefore considered exceptional measures necessary to prevent offenders from evading justice and continuing illicit activities while on bail.⁴

III. JUDICIAL INTERPRETATION OF SECTION 37

Judicial interpretation has played a crucial role in defining the scope and application of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Courts have consistently recognized that the provision imposes a higher threshold than that applicable under ordinary criminal law.

In *Union of India v. Ram Samujh*, the Supreme Court observed that narcotic offences have far-reaching consequences for society and therefore warrant a stricter approach to bail.⁵ The Court emphasized that liberal interpretation of bail provisions could undermine the objectives of the Narcotic Drugs and Psychotropic Substances Act, 1985 and frustrate efforts to combat drug trafficking.

Similarly, in *Union of India v. Shiv Shanker Kesari*, the Supreme Court clarified that the phrase "reasonable grounds" appearing in Section 37 requires substantial and credible grounds for believing that the accused is not guilty.⁶ Mere doubts regarding the prosecution case are insufficient to satisfy the statutory requirement.

Nevertheless, the judiciary has increasingly sought to balance statutory restrictions with constitutional guarantees. In *Tofan Singh v. State of Tamil Nadu*, the Supreme Court strengthened procedural protections by holding that confessional statements recorded by officers under the Narcotic Drugs and Psychotropic Substances Act, 1985 are not admissible as confessions against an accused person. The decision reinforced the importance of fair trial rights within the framework of narcotics prosecutions.⁷

More recently, courts have recognized that prolonged incarceration may justify a more liberal approach. In *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*, the Supreme Court held that constitutional courts cannot ignore excessive periods of pre-trial detention merely because the restrictions contained in Section 37 are applicable. The judgment marked a significant development in reconciling the objectives of the Narcotic Drugs and Psychotropic Substances Act, 1985 with the constitutional protection of liberty.⁸

IV. SECTION 37 AND THE CONSTITUTIONAL RIGHT TO PERSONAL LIBERTY

Article 21 of the Constitution of India guarantees that no person shall be deprived of life or personal liberty except according to a procedure established by law. Through judicial interpretation, Article 21 has evolved into a broad source of procedural and substantive safeguards against arbitrary state action.



The operation of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 raises complex constitutional questions because accused persons often remain in custody for prolonged periods before the conclusion of trial. Given the technical nature of narcotics investigations and the volume of evidence involved, prosecutions under the Act frequently experience substantial delays.⁹

Extended detention prior to conviction may effectively result in punishment without trial. This becomes particularly problematic where the accused ultimately secures an acquittal after spending several years in custody. Such situations challenge the presumption of innocence and raise concerns regarding the proportionality of restrictions imposed under the Narcotic Drugs and Psychotropic Substances Act, 1985.

The constitutional challenge therefore lies in striking a balance between collective security and individual freedom. While the State possesses a legitimate interest in preventing drug-related crimes, restrictions on liberty must remain consistent with constitutional principles of fairness, reasonableness, and due process.¹⁰

V. PRESUMPTION OF INNOCENCE AND THE BURDEN IMPOSED BY SECTION 37

The presumption of innocence is a foundational principle of criminal jurisprudence and is recognized as an integral component of the right to a fair trial. Although not expressly mentioned in the Constitution of India, the principle has been consistently acknowledged by courts as an essential safeguard against arbitrary punishment. Under ordinary criminal law, the burden of proving guilt rests upon the prosecution, and an accused person is not required to establish innocence prior to conviction.

Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 significantly alters this traditional approach. The provision requires the court to be satisfied that there are reasonable grounds for believing that the accused is not guilty before bail can be granted. Consequently, the accused is placed in a position where securing release often requires demonstrating the weaknesses of the prosecution case at a preliminary stage.¹¹

Critics argue that this requirement indirectly shifts the burden onto the accused and dilutes the presumption of innocence. Since the prosecution generally possesses greater access to evidence during the initial stages of investigation, the accused may face considerable difficulty in satisfying the statutory requirements. This challenge becomes particularly significant in cases involving commercial quantities where the restrictions under Section 37 operate with full force.

Although the Supreme Court has repeatedly upheld the validity of stringent bail provisions under the Narcotic Drugs and Psychotropic Substances Act, 1985, courts have increasingly recognized the need to interpret such provisions in a manner consistent with constitutional guarantees. A careful balance must therefore be maintained between legislative objectives and fundamental criminal law principles.¹²

VI. COMPARATIVE PERSPECTIVE: BAIL IN DRUG OFFENCE CASES IN OTHER JURISDICTIONS

A comparative examination of foreign legal systems reveals that many jurisdictions adopt stringent measures against drug trafficking while simultaneously preserving meaningful judicial discretion in bail matters. Countries such as the United Kingdom, Canada, and Australia treat serious narcotics offences as grave crimes; however, courts generally retain broader authority to evaluate individual circumstances before determining whether continued detention is necessary.

In the United Kingdom, courts assess factors such as the seriousness of the offence, the risk of absconding, the possibility of witness intimidation, and the likelihood of reoffending. While drug trafficking offences may justify refusal of bail, there is no statutory requirement comparable to the twin conditions contained in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.¹³

Similarly, Canadian courts place considerable emphasis on constitutional protections and the presumption of innocence when deciding bail applications. Detention before conviction is generally viewed as an exceptional measure that must be justified by compelling reasons.¹⁴

The comparative experience demonstrates that effective drug control and protection of personal liberty need not be mutually exclusive objectives. The Indian experience under the Narcotic Drugs and Psychotropic Substances Act, 1985 highlights the challenges associated with maintaining this balance in the context of stringent statutory restrictions.



VII. RECENT JUDICIAL TRENDS AND THE FUTURE OF NDPS BAIL JURISPRUDENCE

Recent judicial decisions indicate an evolving approach toward bail under the Narcotic Drugs and Psychotropic Substances Act, 1985. While courts continue to acknowledge the seriousness of narcotics offences, there is increasing recognition that prolonged incarceration without conclusion of trial may infringe constitutional rights.

The Supreme Court's decision in *Mohd. Muslim @ Hussain v. State (NCT of Delhi)* emphasized that statutory restrictions cannot completely eclipse the guarantees of personal liberty under Article 21 of the Constitution.¹⁵ Courts have subsequently shown greater willingness to consider factors such as the duration of custody, delay in trial, age of the accused, and the likelihood of early disposal of proceedings.

Another notable trend is the growing scrutiny of procedural compliance under the Narcotic Drugs and Psychotropic Substances Act, 1985. Courts increasingly examine whether mandatory safeguards relating to search, seizure, arrest, and investigation have been properly followed. Procedural irregularities may significantly affect the strength of the prosecution case and influence judicial consideration of bail applications.

The future of NDPS bail jurisprudence is likely to be shaped by continued efforts to reconcile statutory objectives with constitutional values. As courts confront issues of overcrowded prisons, delayed trials, and prolonged detention, a more rights-oriented interpretation of Section 37 may gradually emerge while preserving the deterrent objectives of the Narcotic Drugs and Psychotropic Substances Act, 1985.¹⁶

VIII. CHALLENGES AND NEED FOR REFORM

Despite its important objectives, the implementation of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has generated several practical concerns. The most significant challenge is the prolonged detention of undertrial prisoners who are unable to satisfy the stringent statutory requirements for bail.¹⁷

Another concern is the difficulty faced by courts in determining, at a preliminary stage, whether there are reasonable grounds to believe that an accused is not guilty. Such an assessment often requires a detailed examination of evidence that would ordinarily be undertaken during trial.

Furthermore, overcrowding in prisons has been aggravated by the restrictive bail framework under the Narcotic Drugs and Psychotropic Substances Act, 1985. A considerable proportion of prisoners charged under the Act remain undertrial detainees awaiting the completion of lengthy judicial proceedings.¹⁸

Meaningful reforms may include the introduction of time-bound trials, enhanced forensic infrastructure, increased judicial capacity, and periodic judicial review of continued detention. Such measures would strengthen the effectiveness of the Act while ensuring greater protection of constitutional rights.¹⁹

IX. CONCLUSION

The stringent bail regime established under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 reflects the legislature's determination to combat the serious threat posed by drug trafficking and organized narcotics-related crime. Nevertheless, the restrictive nature of the provision has generated persistent concerns regarding personal liberty, prolonged pre-trial detention, and the presumption of innocence.²⁰

Judicial developments demonstrate an increasing recognition that the objectives of the Narcotic Drugs and Psychotropic Substances Act, 1985 must be harmonized with the constitutional mandate contained in Article 21. While strict bail conditions may be justified in appropriate cases, they should not operate in a manner that results in arbitrary or indefinite deprivation of liberty. A balanced approach that respects both societal interests and individual rights remains essential for ensuring the legitimacy and effectiveness of the criminal justice system.

FOOTNOTES

¹ See Code of Criminal Procedure, 1973 §§ 437–439 (India) (governing the grant of bail in criminal cases).

² The Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61 of 1985, § 37 (India).

³ Id. § 37(1)(b).

⁴ Statement of Objects and Reasons, Narcotic Drugs and Psychotropic Substances Bill, 1985.

⁵ Union of India v. Ram Samujh.



- ⁶ Union of India v. Shiv Shanker Kesari.
- ⁷ Tofan Singh v. State of Tamil Nadu.
- ⁸ Mohd. Muslim @ Hussain v. State (NCT of Delhi).
- ⁹ Hussainara Khatoon v. State of Bihar (recognizing the right to a speedy trial as part of Article 21).
- ¹⁰ Maneka Gandhi v. Union of India.
- ¹¹ Union of India v. Shiv Shanker Kesari.
- ¹² State of Kerala v. Rajesh.
- ¹³ Bail Act 1976, c. 63.
- ¹⁴ Canadian Charter of Rights and Freedoms § 11(e).
- ¹⁵ Mohd. Muslim @ Hussain v. State (NCT of Delhi).
- ¹⁶ See Rabi Prakash v. State of Odisha.
- ¹⁷ National Crime Records Bureau (latest available edition).
- ¹⁸ Id.
- ¹⁹ Law Commission of India, Reports on Criminal Justice Reforms and Bail Administration.
- ²⁰ State of Kerala v. Rajesh; Mohd. Muslim @ Hussain v. State (NCT of Delhi).

