



## BAIL UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT (NDPS ACT)

Authored by [Krishna Vijay Singh](#) (Senior Partner – Kochhar & Co.) and [Muneeb Rashid Malik](#) (Senior Associate at Kochhar & Co.)

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The Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) is one of the strictest criminal laws in the country. Section 37 of the NDPS Act restricts the grant of bail in matters which involve commercial quantity of narcotic drugs or psychotropic substances. Commercial quantity refers to a large quantity of a narcotic/psychotropic substance above the threshold notified by the government for such substance. Section 37 of the NDPS Act makes bail conditional on what is often called the “twin test”, first, the Public Prosecutor must be given an opportunity to oppose the application, and second, when opposed, the court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and is not likely to commit any offence while out on bail.

Section 37 of the NDPS Act has often been categorised as creating an exception to the general rule that bail is the rule and jail is the exception. Yet, courts have repeatedly held that the NDPS Act does not dispense with this rule when the prosecution’s case is tenuous. Safeguards relating to search, seizure, sampling, admissibility of evidence and forensic testing are not technicalities but fundamental requirements under the NDPS Act. If the prosecution ignores these requirements, the rigour of Section 37 of the NDPS Act does not become an obstacle and bail becomes not just permissible but necessary.

### When Procedure Becomes Proof

In NDPS cases, the devil truly lies in the details. The Supreme Court has repeatedly stressed that the handling of seized contraband must follow strict procedural safeguards. In *Union of India v. Mohanlal & Anr.* (2016) 3 SCC 379, it was held that seized material must be inventoried, photographed and sampled in the presence of the Magistrate whose certification alone validates the samples as primary evidence. The judgment of the Supreme Court in *Yusuf @ Asif v. State*, 2023 SCC OnLine SC 1328 reinforced that failure to comply with these formalities renders the seized material inadmissible and vitiates the trial. Similarly, in *Simranjit Singh v. State of Punjab*, 2023 SCC OnLine SC 906, improperly drawn samples created serious doubts about whether the substance was contraband resulting in the prosecution failing to prove its case, a stance affirmed in *Bothilal v. Intelligence Officer, Narcotics Control Bureau*, 2023 SCC OnLine SC 498. These rulings highlight that in NDPS cases, strict adherence to procedure is not merely a formality, it is the backbone of proof.

## **Failing the Paper Trail**

Section 42 of the NDPS Act requires the officer receiving information about the commission of an offence punishable under the NDPS to record the information so received in writing and further mandates that such information received be forwarded by such officer to his immediate superior officer within 72 hours. Relying on the Supreme Court's judgment in *Sarija Banu v. State* AIR 2004 SCW 7488 which clarified that compliance with Section 42 of the NDPS Act can be considered even at the bail stage, the Bombay High Court in *Raju Bhavlal Pawar v. State of Maharashtra*, B.A. No. 568 of 2021 held that simply forwarding a vague letter to a superior officer does not amount to compliance of Section 42 of the NDPS Act. The Punjab and Haryana High Court in *Pankaj v. State of Punjab* 2022 SCC OnLine P&H 1296 also emphasized that failure to comply with Section 42 of the NDPS Act becomes fatal to the prosecution's case. Thus, when secret information is not properly recorded and forwarded, the very foundation of the prosecution's case becomes questionable and bail is warranted.

## **Whispers That Cannot Bind**

Confessional statements of co-accused are inadmissible in evidence and cannot establish guilt without independent corroboration. The Supreme Court in *Tofan Singh v. State of Tamil Nadu* (2021) 4 SCC 1 held that confessions under Section 67 of the NDPS Act are inadmissible, being barred by Section 25 of the Indian Evidence Act (now Section 23 of the *Bharatiya Sakshya Adhinyam*, 2023). In *Narcotics Control Bureau v. Pallulabid Ahmad Arimutta* (2022) 12 SCC 633, the Supreme Court further held that arrests based solely on such confessions cannot justify cancellation of bail. Building on this principle, the Bombay High Court in *Ravi Manoj Rai v. Union of India* 2025 SCC OnLine Bom 260 reiterated that confessions of co-accused cannot be admitted as evidence without independent corroboration. Similarly, in *Md. Irshad v. State NCT of Delhi* 2022 SCC OnLine Del 1317, the Delhi High Court granted bail to the accused because no independent evidence supported the confessional statements of the co-accused.

## **Lens of Fairness**

With the introduction of the *Bharatiya Nagarik Suraksha Sanhita*, 2023 ("the BNSS"), videography of search and seizure has become mandatory. Courts have treated this safeguard as vital to ensure fairness and transparency. In *Bantu v. State of NCT of Delhi* 2024 SCC OnLine Del 4671, the Delhi High Court held that Section 105 BNSS, which requires recording of search and seizure through audio-video electronic means, is mandatory. Similarly, in *Chandrabhan Janardhan Yadav v. State of Maharashtra* 2025 SCC OnLine Bom 462, the Bombay High Court relied on the Calcutta High Court's decision in *Kalu Sk. v. State* 2022 SCC OnLine Cal 4556, which directed that recovery of narcotic substances must be videographed and that non-compliance would even invite departmental action against the officers concerned. These judgments collectively confirm that the absence of videography casts serious doubt on the case of the prosecution and can strongly support the grant of bail.

## **Justice Cannot Wait for the Lab**

Forensic analysis lies at the heart of the prosecution's case under the NDPS Act. Rule 14 of the *Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules*, 2022 ("NDPS Rules") requires chemical laboratories to send their reports to the court with a copy to the investigating officer within 15 days of receiving the sample. Where a detailed quantitative test requires more time, the laboratory must still send the qualitative test result within 15 days followed by the quantitative test result within the next 15 days.

Courts have repeatedly cautioned that individuals cannot be incarcerated merely on suspicion or on the strength of preliminary field tests. The Bombay High Court, in *Sagar Parshuram*

Joshi v. State of Maharashtra, 2021 SCC OnLine Bom 3051, held that drug detection kit tests are merely indicative and preliminary in nature and require confirmation through laboratory analysis. The Supreme Court in Bharat Chaudhary v. Union of India (2021) 20 SCC 50 granted bail to the accused because the forensic reports expressly stated that quantitative analysis of the seized tablets could not be carried out for want of facilities. In the absence of clarity on whether the recovered substance constituted a commercial quantity, it was held that the prosecution could not rely on such reports to oppose bail. The Kerala High Court in Anuraj v. State of Kerala, 2024 KHC Online 399, went a step further, stressing that delays in submitting FSL reports cause serious prejudice to the accused. What was initially alleged to be MDMA was later confirmed as methamphetamine of an intermediate quantity. It was observed that the entire complexion of the case changes once the forensic report is received and that an accused cannot be kept in jail on assumptions.

A similar view was taken in Akshay v. State of Kerala, B.A. No. 7586 of 2024. The Kerala High Court found that the chemical analysis report had not been produced despite an earlier order. In the absence of clarity on the nature of the substance, interim bail was granted for one month, which was later made absolute when the prosecution itself admitted that the contraband was methamphetamine and that too of an intermediate quantity. It was held that in such circumstances, the rigour of Section 37 of the NDPS Act would not apply to the matter. Likewise, in J. Mani v. State of Tamil Nadu, CRL OP (MD) No. 19369 of 2024, the Madras High Court granted interim bail to the accused observing that although the contraband had been seized in August 2024 and forwarded for forensic testing, the report had still not reached the court and held that this delay was a clear violation of Rule 14 of the NDPS Rules. Together, these pronouncements reaffirm that forensic testing is the very foundation of NDPS matters. Where FSL reports are absent, inconclusive or delayed, the benefit must go to the accused and bail becomes necessary.

### **Not Every Barrier is Impassable**

Section 37 of the NDPS Act creates formidable barriers in the form of twin test to bail but courts have clarified that it applies only when there is clear prima facie evidence linking the accused with the offence. In Joy Mitra v. Narcotics Control Bureau 2025 SCC OnLine Del 3016, the Delhi High Court granted bail to the accused where the only material was that the accused's details appeared on certain seized parcels. It was noted that such details might have been misused and that no nexus had been established between the accused and the recovery. The court thus stressed that Section 37 of the NDPS Act is not to be applied mechanically but only after careful scrutiny of the material on record. When there is no material to link the accused with the recovery of the commercial quantity of contrabands, the rigours of Section 37 of the NDPS Act do not get attracted.

### **Conclusion**

Therefore, while the NDPS Act has been enacted to be uncompromising but its strictness does not permit disregard of legal safeguards. From forensic testing to proper sampling, from compliance with Section 42 (NDPS Act) to videography under the BNSS, and from the inadmissibility of confessions of co-accused to the careful application of Section 37 - every safeguard plays a crucial role in protecting liberty of an accused. The consistent principle across the judgments of the courts is clear that fair investigation is the cornerstone of fair trial and custody without compliance is unjustifiable. Bail under the NDPS Act may be difficult but it cannot be denied when the prosecution's case disregards the law.