

Legal Bulletin

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NDPS Act, 1985



2025

NARCOTICS CONTROL BUREAU

Ministry of Home Affairs, Govt. of India

AT A GLANCE

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| CASE 1 | |
|-------------------------|--|
| Title | MIHIR RAJESH SHAH Vs. STATE OF MAHARASHTRA & ANR |
| Court | Supreme Court of India |
| Citation | 2025 SCC OnLine SC 1288 |
| Section | Article 22 (1) Constitution of India & Section 47 Of BNSS |
| Date of Decision | 6.11.2025 |

Brief facts: The Appellant preferred appeal against the decision of High Court of Bombay where notwithstanding the acknowledgment of procedural lapse, the validity of arrest was upheld due to the appellant's conscious awareness of the gravity of the offence, supported by substantial evidence and appellant's evasion of arrest. Thereby justifying custody despite the missing written grounds.

Issues examined:

- (a) Whether in each and every case, even arising out of an offence under IPC 1860 (BNS 2023) it is necessary to furnish grounds of arrest to an accused either before arrest or forthwith after arrest.
- (b) Whether, even in exceptional cases, where on account of certain exigencies it is not possible to furnish the grounds of arrest either before arrest or immediately after arrest, the arrest would be vitiated on the ground of non-compliance with the provisions of Section 50 of the CrPC 1973 (Section 47 of BNSS 2023).

Observations / Ratio:

- a) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 & now BNS 2023.
- b) Grounds of arrest must be communicated in writing to the arrestee in the language he / she understands.

- c) Where, the arresting officer / person is unable to communicate grounds of arrest in writing on or soon after arrest, it must be so done orally.
- d) Grounds of arrest must be communicated in writing within a reasonable time and in any case at least 2 hours prior to production of the arrestee for remand proceedings before the magistrate.
- e) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

| CASE 2 | |
|------------------|--|
| Title | UNION OF INDIA VS. NAMDEO ASHRUBA NAKADE |
| Court | Supreme Court of India |
| Citation | 2025 LiveLaw (SC) 1109 |
| Section | Section 37 of NDPS Act, 1985 |
| Date of Decision | 07.11.2025 |

Brief facts: Appellant preferred an appeal challenging the judgment dated 11.03.2025 passed by the High Court of Andhra Pradesh whereby the High Court granted bail to the Respondent for offences under Section 8(c) read with Sections 20, 28 and 29 of NDPS Act.

Issues examined: Whether bail can be granted in a commercial quantity case when proof of organized drug trafficking is present.

Observations / Ratio:

- a) In organized drug trafficking, no case for dispensing with mandatory requirement of Section 37 of the NDPS Act is made out when prosecution has proved beyond reasonable doubt, conscious possession of 23.500 kg of ganja.
- b) In offences punishable with 10 to 20 years, it cannot be said that the Respondent has been incarcerated for an unreasonably long time (one year four months).
- c) Contention of accused that his brother, a Sepoy in the Indian army has given an undertaking to ensure Respondent-accused's compliance with the bail conditions is of no relevance because if the Respondent were to abscond, his brother cannot be sent to prison. In India, the alleged sins of an accused cannot be visited on his brother or other family members.

| CASE 3 | |
|------------------|--------------------------------------|
| Title | UNION OF INDIA VS. VIGIN K. VARGHESE |
| Court | Supreme Court of India |
| Citation | 2025 SCC OnLine SC 2440 |
| Section | Section 37 of NDPS Act, 1985 |
| Date of Decision | 13.11.2025 |

Brief facts: Appellant preferred an appeal against the decision dated 22.01.2025 and 12.03.2025 of High Court of Bombay granting bail to the respondent accused Vigin K. Varghese. First order, relates to the seizure of approximately 50.232 kilograms of cocaine imported from South Africa and second relates to an earlier seizure of 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine allegedly imported through the same channel only days before the seizure of 50.232 Kgs of cocaine.

Issues examined: Issue raised is that Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.

Observations / Ratio:

- a) Analysis of twin requirements of section 37 is to be done with reference to the material placed by the prosecution.
- b) The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b).
- c) The two High Court orders do not advert to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure.
- d) The orders were set aside and the matter was remitted to the High Court for fresh consideration of the respondent's prayer for bail, keeping in view the parameters of Section 37 of the NDPS Act.

| CASE 4 | |
|-------------------------|--|
| Title | KULDEEP SINGH Vs. DRI |
| Court | Rajasthan High Court, Jaipur bench |
| Citation | S.B. Criminal Miscellaneous Bail Application No. 13353 / 2025 |
| Section | Cancellation of bail – Hydroponic weed |
| Date of Decision | 27.11.2025 |

Brief facts: The accused-applicant after his arrest in a matter investigated by DRI filed a bail application under Section 483 BNSS for transporting Hybrid ganja / Hydroponic Weed from Bangkok.

Issues examined: Grant of bail in cases of Hydroponic Weed even when quantity is less than the commercial quantity, i.e. 20 kg.

Observations / Ratio:

- a) That the intensity of the recovered narcotic substance is much greater than the prescribed commercial quantity and that the market value of the recovered narcotic substance is approximately Rs.15.50 crores.
- b) That content of Tetrahydrocannabinol (THC) in the recovered narcotic substance is approximately 25% as compared to 2% THC in ordinary ganja.
- c) Prosecution in white collar crimes is crucial for maintaining public trust in the financial system and ensuring accountability amongst those who manipulate economic regulations for their personal gains.
- d) The bail application under Section 483 BNSS was dismissed.

| CASE 5 | |
|-------------------------|--|
| Title | SAGAR Vs. STATE OF UP |
| Court | Supreme Court of India |
| Citation | 2025 SCC OnLine SC 2584 |
| Section | Grant of bail in parity with co-accused |
| Date of Decision | 28.11.2025 |

Brief Facts: The appellant / complainant in FIR was aggrieved by an order granting bail in connection with a FIR under Sections 147, 148, 149, 302, 506, Indian Penal Code, 18601 to one Rajveer by order dated 3rd January 2025 by the High Court of Judicature at Allahabad.

Issues examined: Whether parity with the co-accused persons can be the sole reason for granting bail?

Observations / Ratio:

- a) Bail has often been stated to be the rule and jail, the exception but at the same time, it does not mean that the relief of bail is to be granted without due regard to the circumstances involved in the alleged offence for which the accused person has been arrested.
- b) That while utilizing parity as a ground for bail, the same must focus on the role of the accused and cannot be utilized solely because another accused person was granted bail in connection with the same offence, and neither can this ground be claimed as a matter of right.

CASE 6

| | |
|-------------------------|---|
| Title | JOTHI ALIAS NAGAJOTHI Vs. STATE, REP. BY THE INSPECTOR OF POLICE |
| Court | Supreme Court of India |
| Citation | 2025 SCC OnLine SC 2774 |
| Section | Section 52A of NDPS Act, 1985 |
| Date of Decision | 11.12.2025 |

Brief Facts: The Appellant preferred an appeal against the decision of High Court of Judicature at Madras, whereby the conviction and sentence imposed upon the appellant under Sections 8(c) r/w 20(b)(ii)(C) and 8 (c) r/w 29(1) of the NDPS Act were affirmed. The appellant (A-2) and her husband (A-1) were intercepted on 21.09.2019 and 23.500 kg of ganja was seized. Sampling was done on the spot and not before a Magistrate.

Issues examined:

- (a) Whether representative samples ought to have been drawn only before a Magistrate in terms of Section 52-A of the NDPS Act and
- (b) Whether sampling at the spot itself renders the entire prosecution void.

Observations / Ratio:

- a) Prosecution has proved, beyond reasonable doubt, that the appellant was in conscious possession of 23.500 kg of ganja, a commercial quantity.
- b) Minor procedural irregularities pointed out do not affect the core of the prosecution case.
- c) Chain of custody in the present case remained clear and continuous.
- d) Conviction and sentence imposed by the Trial Court and affirmed by the High Court calls for no interference.
- e) Court has no discretion to reduce the sentence below the statutory minimum under Section 20(b)(ii)(C) of the NDPS Act.



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