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# **BAIL UNDER NDPS: LEGAL FICTION VS. LIBERTY IN LIGHT OF ARTICLE 21**

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## **Abstract**

*The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) is among the strictest penal statutes in India, incorporating provisions that deviate significantly from general criminal law principles. Of these, The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 stands out for its impact on bail jurisprudence. By requiring the court to be satisfied that the accused is not guilty and will not commit an offence while on bail, Section 37 introduces a legal fiction that reverses the presumption of innocence even before trial. Coupled with The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 54, which places a reverse burden of proof on the accused, the provision creates a double presumption against liberty. While intended to deter organized drug trafficking, this framework has led to prolonged pre-trial detention and raised serious constitutional concerns under The Constitution of India, Article 21. Judicial responses, including in *Pauline Nalwoga v. Customs*, *Lovepreet Singh v. State of Punjab*, 2024, and *State of Kerala v. Prabhu*, 2024, reveal both the potential and the limitations of procedural safeguards in mitigating these effects. This paper examines the tension between legislative intent and constitutional liberty, assesses recent jurisprudence, and proposes reforms to reconcile deterrence with fair trial guarantees.*

**Keywords:** NDPS Act, Section 37, Bail, Article 21, Reverse Burden of Proof

## **1. Introduction**

The *Narcotic Drugs and Psychotropic Substances Act, 1985* (NDPS Act) was enacted to consolidate and amend laws relating to narcotic drugs, psychotropic substances<sup>1</sup>, and to fulfill India's obligations under the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 UN Convention Against Illicit Traffic. From inception, it has adopted a zero-tolerance stance, granting enforcement agencies sweeping

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<sup>1</sup> Soni, Mahendra. "Understanding Narcotic Drugs and Psychotropic Substances: A Comprehensive Review of Law and Practice." *HEALTH AND MEDICAL LAW IN INDIA* (2024): 181.

powers, introducing stringent evidentiary rules, and prescribing severe penalties.

While the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) — successor to the *Code of Criminal Procedure, 1973* — maintains that bail is the rule and jail is the exception, the NDPS<sup>2</sup> Act reverses this presumption in cases involving commercial quantities, financing illicit traffic, or harbouring offenders. Under *The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37*, bail may only be granted if two cumulative conditions are met: (i) the Public Prosecutor is given an opportunity to oppose; and (ii) if opposed, the court must be satisfied that there are reasonable grounds to believe the accused is not guilty and will not commit any offence while on bail.<sup>3</sup>

This transforms the bail stage into a quasi-trial, compelling the accused to establish prima facie innocence without access to complete evidence. The burden is compounded by *The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 54*, which presumes culpability from possession unless satisfactorily explained. The combined effect is a legal fiction of guilt that structurally disadvantages the accused.<sup>4</sup>

The constitutional tension lies in the interaction with *The Constitution of India, Article 21*, which the Supreme Court in *Maneka Gandhi v. Union of India*<sup>5</sup>, held to require that any deprivation of liberty must follow a procedure that is fair, just, and reasonable. The NDPS bail framework, by embedding a presumption of guilt at the pre-trial stage, risks violating this mandate.

Recent cases illustrate both the rigidity and flexibility of this framework. In *Pauline Nalwoga v. Customs*, 2024 SCC OnLine Del 3121, the Delhi High Court granted relief after finding violations of *The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 50*.<sup>6</sup> In *Lovepreet Singh v. State of Punjab*<sup>7</sup>, (2024), fabricated recovery evidence led to bail despite Section 37's bar. However, in *Mere Breach of S. 52A NDPS Act Not Fatal*<sup>8</sup>, (2025), the

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<sup>2</sup> Chitkara, Radhika. "The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws." *Nat'l L. Sch. India Rev.* 35 (2023): 139.

<sup>3</sup> Kalura, Rahul. "Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985." *Issue 4 Int'l JL Mgmt. & Human.* 4 (2021): 2177.

<sup>4</sup> The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 54.

<sup>5</sup> AIR 1978 SC 597

<sup>6</sup> *The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 50.*

<sup>7</sup> SCC OnLine P&H 1875

<sup>8</sup> 2 SCC 412

Supreme Court held that not every procedural irregularity warranted bail if the chain of custody remained intact.

This introduction frames the NDPS bail regime as a constitutional conflict between legislative deterrence and personal liberty, setting the stage for a detailed examination of its legal structure, constitutional validity, judicial application, and socio-legal impact.

## 2. Legal Framework: Bail under NDPS and the Concept of Legal Fiction

*The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37* is a non-obstante provision overriding the general bail powers under BNSS. It applies to offences involving commercial quantities, offences under *Sections 19, 24, and 27A*, and repeat offenders. Its twofold conditions — prosecutorial opportunity and judicial satisfaction of non-guilt and non-reoffending — must be satisfied cumulatively. The Supreme Court in *Union of India v. Shiv Shanker Kesari*<sup>9</sup>, (2007), clarified that these conditions are mandatory and not merely directory.

The term “reasonable grounds” has been judicially interpreted to require more than prima facie grounds but less than proof beyond reasonable doubt. Yet, in practice, many courts treat the prosecution’s allegations as sufficient to deny bail, deferring contested factual issues to trial. This is compounded by *The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 54*, which presumes guilt from possession unless satisfactorily explained by the accused. Together, these provisions embed a legal fiction: that the accused is culpable unless proven otherwise even before the trial has commenced.<sup>10</sup>

Legal fiction here serves a deterrent function — the legislature assumes that the severity of penalties and difficulty of obtaining bail will discourage drug offences. However, critics argue it undermines the presumption of innocence, a principle implicit in *The Constitution of India, Article 21*. In *Noor Aga v. State of Punjab*<sup>11</sup>, (2008), the Supreme Court held that reverse burden clauses do not dispense with the prosecution’s initial duty to establish foundational facts such as conscious possession.

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<sup>9</sup> 7 SCC 798

<sup>10</sup> The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 54.

<sup>11</sup> 16 SCC 417

The 2024 decision in *State of Kerala v. Prabhu*<sup>12</sup>, (2024), illustrates evolving judicial scrutiny. The Kerala High Court stressed that non-compliance with statutory safeguards under *Sections 42 and 50* can affect the satisfaction required under Section 37, thereby justifying bail. Conversely, in *Mere Breach of S. 52A NDPS Act Not Fatal*, the Supreme Court signalled a shift towards prioritising substantive proof over procedural perfection, holding that minor procedural lapses may not justify bail if the prosecution's core case remains intact.

When compared to BNSS bail provisions, which deny bail only in narrowly defined situations like risk of absconding or influencing witnesses, Section 37's legislative presumption against bail represents a structural inversion of criminal procedure norms. This inversion — the essence of legal fiction — is central to the NDPS bail debate and its constitutional implications.

### 3. Article 21 and the Constitutional Right to Liberty

*The Constitution of India, Article 21* guarantees that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” In *Maneka Gandhi v. Union of India*<sup>13</sup>, the Supreme Court expanded this to require that the procedure be “fair, just, and reasonable,” rejecting any law that is arbitrary or oppressive. Bail jurisprudence in India is therefore intrinsically tied to Article 21 — pre-trial incarceration is permissible only when necessary, and detention before conviction is not intended to be punitive.<sup>14</sup>

The NDPS Act's *Section 37*, however, embeds a statutory departure from this principle. By requiring courts to be satisfied of non-guilt and non-reoffending, it demands that the accused establish elements of innocence at a stage where they lack access to the prosecution's complete evidence. This creates a procedural imbalance that runs counter to the “equality of arms” principle implicit in Article 21.

The presumption of innocence, while not expressly mentioned in the Constitution, is a cornerstone of Indian criminal law, reinforced by the Evidence Act and recognised in *Narendra Singh v. State of M.P.*<sup>15</sup>. Internationally, Article 14(2) of the International Covenant on Civil

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<sup>12</sup> SCC OnLine Ker 3020

<sup>13</sup> AIR 1978 SC 597

<sup>14</sup> Martufi, Adriano, and Christina Peristeridou. "The purposes of pre-trial detention and the quest for alternatives." *European Journal of Crime, Criminal Law and Criminal Justice* 28.2 (2020): 153-174.

<sup>15</sup> (2004) 10 SCC 699

and Political Rights (ICCPR), to which India is a party, codifies this presumption.<sup>16</sup> Reverse onus clauses, such as those in *Sections 37 and 54* of the NDPS Act, are permissible under international law only when proportionate and accompanied by adequate safeguards.

The challenge lies in proportionality. In *Shaheen Welfare Association v. Union of India*, (1996)<sup>17</sup>, dealing with TADA detainees, the Supreme Court recognised that prolonged incarceration without trial is constitutionally suspect. The Court allowed conditional bail for undertrials who had spent long periods in custody, reasoning that detention should not exceed reasonable necessity. This principle has direct application to NDPS cases, where trials often stretch over years.

Recent jurisprudence reflects attempts to harmonise Section 37 with Article 21. In *Pauline Nalwoga v. Customs*<sup>18</sup>, (2024), the Delhi High Court stressed that procedural safeguards under *Sections 42 and 50* are integral to assessing whether reasonable grounds of non-guilt exist. Similarly, in *Lovepreet Singh v. State of Punjab*<sup>19</sup>, (2024), the Punjab and Haryana High Court granted bail upon finding that recovery evidence was fabricated, holding that liberty cannot be curtailed on tainted material.

The constitutional debate is therefore not only about whether Section 37 violates Article 21 in theory, but also how courts operationalise the “reasonable grounds” test in practice. If courts adopt a high evidentiary threshold for the prosecution before applying Section 37’s presumption, the provision can coexist with Article 21. If, however, courts continue to treat allegations as sufficient to deny bail, the constitutional promise of fair procedure remains compromised.

#### 4. Judicial Interpretation of Section 37: Case Law Analysis

Judicial treatment of *Section 37* has evolved through three broad phases: strict textual adherence, cautious procedural balancing, and recent pragmatic moderation.

In *Union of India v. Shiv Shanker Kesari*<sup>20</sup>, , the Supreme Court reinforced the mandatory

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<sup>16</sup> Joseph, Sarah. "International covenant on civil and political rights (ICCPR)." Edward Elgar Publishing, 2022.

<sup>17</sup> 2 SCC 616

<sup>18</sup> SCC OnLine Del 3121

<sup>19</sup> SCC OnLine P&H 1875

<sup>20</sup> (2007) 7 SCC 798

nature of Section 37's twin conditions, holding that satisfaction of non-guilt and non-reoffending must be cumulative. The Court warned against granting bail on mere prima facie grounds. This set a precedent for strict application.

The balancing phase emerged with *Noor Aga v. State of Punjab*<sup>21</sup>, (2008), where the Court held that reverse burdens under Sections 35 and 54 apply only after the prosecution proves foundational facts like conscious possession. This decision injected procedural fairness into the framework, allowing accused persons to challenge bail denial where basic prosecution requirements were unmet.

Recent High Court rulings have adapted these principles to the contemporary NDPS landscape. In *Pauline Nalwoga v. Customs*<sup>22</sup>, (2024), the Delhi High Court granted bail after finding that the search violated *Section 50* rights, undermining the prosecution's prima facie case. In *Lovepreet Singh v. State of Punjab*, 2024 SCC OnLine P&H 1875, fabricated recovery evidence and inconsistent seizure memos were sufficient to satisfy Section 37's "reasonable grounds" test.

Conversely, in *State of Kerala v. Prabhu*, 2024 SCC OnLine Ker 3020, the Kerala High Court refused bail despite procedural irregularities, holding that non-compliance with *Section 42* alone was insufficient absent prejudice to the accused. This aligns with the Supreme Court's reasoning in *Mere Breach of S. 52A NDPS Act Not Fatal*, (2025) 2 SCC 412, which prioritises substantive evidence integrity over technical defects.

The mixed approaches reveal a judicial split. One line of authority uses procedural compliance as a gateway to bail, viewing violations as undermining the statutory presumption. Another line sees Section 37 as nearly absolute, allowing bail only in cases of clear prosecutorial failure on core facts. The Supreme Court has yet to conclusively resolve this tension, leaving bail outcomes highly fact-dependent and jurisdiction-specific.

## 5. Section 37 vs. Fair Trial Rights: Procedural and Practical Challenges

One of the primary criticisms of *The Narcotic Drugs and Psychotropic Substances Act, 1985*, *Section 37* is that it structurally undermines the fair trial guarantees implicit in *The Constitution*

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<sup>21</sup> 16 SCC 417

<sup>22</sup> SCC OnLine Del 3121

of India, Article 21. The fair trial principle, as developed in *Maneka Gandhi v. Union of India*<sup>23</sup>, and further strengthened in *Hussainara Khatoon v. State of Bihar*<sup>24</sup>, demands that criminal procedure be reasonable, just, and not excessive in depriving liberty. In the NDPS bail context, several features of Section 37 create practical and procedural difficulties that jeopardize this standard.

First, the requirement that courts be satisfied of “reasonable grounds” to believe that the accused is not guilty transforms the bail stage into a premature merits assessment. The accused is effectively compelled to disclose their defence strategy and rebut prosecution allegations without full access to the prosecution’s evidence. This not only distorts the adversarial balance but also risks prejudicing the accused at trial.<sup>25</sup>

Second, prolonged pre-trial detention has become a systemic issue in NDPS cases. The trial process is often delayed due to the complexity of forensic examination, procedural compliance verification under Sections 42, 50, 52, and 55, and overburdened court dockets. In *Shaheen Welfare Association v. Union of India*<sup>26</sup>, the Supreme Court recognised that indefinite incarceration of undertrials, even under stringent laws like TADA, violates Article 21. Yet, NDPS undertrials frequently remain in custody for years — sometimes for periods exceeding the likely sentence for lesser offences.

Third, procedural irregularities that should weigh heavily in bail considerations are often deferred to trial. For instance, violations of Section 50 (right to be searched in the presence of a Magistrate or Gazetted Officer) can directly impact the legality of a seizure, but courts sometimes treat them as matters for trial, maintaining detention in the meantime. The Delhi High Court in *Pauline Nalwoga v. Customs*<sup>27</sup>, (2024), departed from this pattern, granting bail due to clear procedural breaches that undermined the prosecution’s case.

Fourth, the prosecutorial opposition mandated under Section 37 is often perfunctory. Public Prosecutors sometimes file generic objections without substantive reasoning, and courts rarely

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<sup>23</sup> AIR 1978 SC 597

<sup>24</sup> AIR 1979 SC 1360

<sup>25</sup> Thakkar, Arya, and Vedant Karia. "Bail under NDPS Act: Guilty until Proven Innocent?." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

<sup>26</sup> (1996) 2 SCC 616

<sup>27</sup> SCC OnLine Del 3121,

scrutinise these objections. This erodes the safeguard's intended function and reinforces denial as the default outcome. Fifth, the double presumption — under Section 54's reverse burden and Section 37's restrictive bail — disproportionately affects the accused's ability to secure interim relief. Where foundational facts are contested, such as whether possession was "conscious," courts are often reluctant to resolve these disputes at the bail stage, leading to automatic detention.<sup>28</sup>

Finally, the investigative process in NDPS cases is itself vulnerable to abuse. Allegations of false implication, planted contraband, and fabricated recovery memos are not uncommon, particularly against economically vulnerable accused. The Punjab and Haryana High Court in *Lovepreet Singh v. State of Punjab*<sup>29</sup>, granted bail after finding recovery records to be inconsistent and untrustworthy, noting that constitutional liberty cannot be held hostage to investigative malpractices. The cumulative effect of these factors is a bail regime that heavily tilts against the accused, eroding the principle that liberty is the norm and detention the exception. Without recalibration, Section 37 risks converting pre-trial detention into a punitive measure — precisely what Article 21 jurisprudence seeks to prevent.<sup>30</sup>

## **6. Socio-Legal Impact: Marginalized Groups and Disproportionate Burden**

The enforcement of *The Narcotic Drugs and Psychotropic Substances Act, 1985*, particularly through *Section 37*, has a pronounced socio-legal dimension that cannot be overlooked when assessing its impact. While the statute's primary objective is to curb the menace of drug trafficking, in practice, its restrictive bail provisions disproportionately affect certain vulnerable groups, leading to systemic inequities and reinforcing cycles of poverty, marginalisation, and criminalisation.

Prison statistics over the past decade reveal that a significant percentage of NDPS undertrials belong to lower socio-economic strata — daily wage earners, migrant labourers, small-scale farmers, and individuals from marginalised castes or minority communities. Many of these individuals are illiterate or semi-literate, lack stable employment, and have minimal access to legal resources. When such individuals are arrested under the NDPS Act, they are immediately

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<sup>28</sup> Saiyed, Mushirali, and Mohit Mathur. "Bail and Rights during Trial under General and Special Laws." *Available at SSRN 5212660* (2025).

<sup>29</sup> (2024) SCC OnLine P&H 1875

<sup>30</sup> KALIA, TANAY, and NIKUNJ SINGH YADAV. "RIGHT TO FAIR TRIAL IN NDPS CASES: EXAMINING POLICE MISUSE OF INVESTIGATIVE POWERS."

placed at a disadvantage due to the stringent nature of *Section 37*, which shifts the burden onto them to prove their non-guilt even before trial.

The problem is exacerbated by the intersection of legal and economic disadvantage. Securing quality legal representation in NDPS cases often requires substantial financial resources due to the technical nature of the law, the need for forensic analysis, and the length of proceedings. Those unable to afford experienced counsel frequently rely on overburdened legal aid lawyers, who may not have the capacity to mount an effective bail application under *Section 37*'s demanding standards. As a result, many undertrials remain incarcerated for years, often for periods exceeding the likely sentence for minor drug offences. The stigma associated with NDPS charges compounds the harm. In tightly knit rural communities or economically fragile urban neighbourhoods, even an accusation can lead to social ostracisation, loss of livelihood, and familial breakdown. While high-profile cases like *State v. Aryan Khan* (2021) demonstrated how media attention can amplify reputational harm, marginalised individuals face this stigma without the counterbalance of public sympathy or resources to rehabilitate their image. Another dimension is the vulnerability of such individuals to procedural abuse. Allegations of false implication, planted contraband, and fabricated recovery memos have surfaced in multiple High Court decisions. The Punjab and Haryana High Court's ruling in *Lovepreet Singh v. State of Punjab*, (2024)<sup>31</sup>, is a case in point — the Court granted bail after finding the recovery records to be contradictory and untrustworthy, observing that constitutional liberty cannot be sacrificed at the altar of investigative impropriety. From a criminological perspective, the current application of *Section 37* often targets low-level actors — couriers, street peddlers, or addicts — rather than high-level traffickers. The Law Commission of India and several criminologists have cautioned that without a differentiated approach, stringent bail provisions may primarily incapacitate replaceable foot soldiers while the masterminds behind drug networks remain insulated. This not only undermines the deterrent purpose of the law but also perpetuates cycles of exploitation, as impoverished individuals are easily recruited to take high risks for minimal pay.<sup>32</sup> The socio-legal impact, therefore, is twofold: it perpetuates inequality within the justice system by making bail inaccessible to those without means, and it diverts the law's harshest measures toward the least powerful actors in the drug trade. Addressing these issues requires more than doctrinal change — it demands structural reforms in legal aid, targeted enforcement strategies, and judicial

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<sup>31</sup> SCC OnLine P&H 1875

<sup>32</sup> Yadav, Nidhi, and Mandeep Kumar. "Loopholes in NDPS." *Part 2 Indian J. Integrated Rsch. L.* 2 (2022): 1.

recognition of socio-economic vulnerability as a relevant factor in applying Section 37.

## 7. Reform Proposals

The constitutional and practical challenges posed by *Section 37* of the NDPS Act call for a multidimensional reform strategy that blends legislative change, judicial innovation, and procedural safeguards. The aim must be to retain the deterrent value of the provision while aligning it with the fundamental rights framework under *The Constitution of India, Article 21*.

### 1. Legislative Amendments for Graded Bail Standards

Parliament should amend Section 37 to differentiate between levels of culpability. For first-time offenders caught with commercial quantities where no organised crime link is established, courts should have the discretion to grant conditional bail after a fixed period of pre-trial detention — for example, 18 months — if the trial has not commenced. This mirrors provisions in other special laws like the Unlawful Activities (Prevention) Act, 1967, where prolonged pre-trial detention without trial progress has prompted judicially evolved safeguards.

### 2. Foundational Proof Requirement Before Section 37 Applies

The Supreme Court's decision in *Noor Aga v. State of Punjab*<sup>33</sup>, should be codified in the NDPS Act, making it mandatory for the prosecution to prove foundational facts such as conscious possession before Section 37 restrictions are triggered. This would prevent automatic denial of bail where initial evidence is weak or procedural safeguards have been breached.

### 3. Procedural Compliance as a Statutory Bail Factor

Statutory recognition should be given to the principle that non-compliance with *Sections 42, 50, and 55* can independently justify granting bail. Currently, such violations are often relegated to trial. By mandating their consideration at the bail stage, procedural safeguards would gain real, enforceable significance.<sup>34</sup>

### 4. Independent Witness Safeguards

To address allegations of planted evidence, all searches and seizures should be witnessed by independent civilians, with mandatory body-camera recording. Jurisdictions like Singapore

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<sup>33</sup> (2008) 16 SCC 417

<sup>34</sup> Bhardwaj, Abhishek. "Evolution of Bail Provisions in Specialized Criminal Legislation: A Study of Indian Statutes and Judicial Precedents." *Issue 2 Int'l JL Mgmt. & Human.* 7 (2024): 1828.

have effectively reduced false implication claims through such measures.

### **5. Digital Chain of Custody**

A tamper-proof digital chain-of-custody system should be implemented nationwide. QR-coded evidence packets and real-time logging of every transfer of seized material can help eliminate disputes over substitution or tampering.

### **6. Strengthening Legal Aid and Early Access to Counsel**

Given the socio-economic profile of most NDPS undertrials, early and competent legal representation is essential. This should be coupled with state-funded forensic experts to assist the defence, ensuring parity of arms.

### **7. Rehabilitation for Addicts and Low-Level Offenders**

For drug addicts or those caught with small commercial quantities without trafficking links, supervised rehabilitation and community service should be preferred over incarceration. This approach, adopted in Portugal's decriminalisation model, has reduced recidivism and drug-related harm.

Implementing these reforms would not dilute the NDPS Act's seriousness but would ensure that its application is constitutionally sound, socially equitable, and targeted toward genuine traffickers rather than the most vulnerable participants in the drug trade.

## **8. Conclusion**

Section 37 of the NDPS Act stands as a striking example of legislative prioritisation of public order and deterrence over individual liberty. By embedding a statutory presumption against bail for serious offences, it departs from the general criminal law presumption in favour of liberty, thereby creating a legal fiction that an accused is culpable until they can demonstrate otherwise. While this design reflects the seriousness with which Parliament regards drug offences, it sits uneasily alongside the constitutional guarantee under *The Constitution of India, Article 21*, which insists that no person shall be deprived of liberty except through fair, just, and reasonable procedure. The jurisprudence surrounding Section 37 reflects an ongoing judicial struggle to reconcile these competing imperatives. The Supreme Court's strict

interpretation in *Union of India v. Shiv Shanker Kesari*<sup>35</sup>, entrenched the legislative intent, while *Noor Aga* introduced safeguards by requiring proof of foundational facts. High Courts, in cases like *Pauline Nalwoga v. Customs* and *Lovepreet Singh v. State of Punjab*, have used procedural violations to temper Section 37's rigidity. Conversely, *Mere Breach of S. 52A NDPS Act Not Fatal* illustrates the judiciary's willingness to prioritise substantive evidence over technical lapses. Yet, the lived reality of NDPS undertrials — especially those from marginalised backgrounds — demonstrates that the provision's rigid application often results in prolonged, punitive pre-trial detention. This undermines the rehabilitative and preventive goals of criminal justice, erodes public confidence in the system, and perpetuates socio-economic inequities. A balanced approach is both possible and necessary. Legislative amendments introducing graded bail criteria, judicial insistence on foundational proof, and procedural innovations like digital evidence tracking can help restore equilibrium between enforcement and liberty. Equally, recognising socio-economic vulnerability as a relevant bail factor can align NDPS enforcement with principles of substantive equality.

Ultimately, the fight against narcotics must not become a fight against the Constitution. The legitimacy of even the most stringent laws depends on their conformity with constitutional guarantees. Section 37's deterrent aims can — and must — coexist with Article 21's promise of liberty, but this requires conscious recalibration of both statutory text and judicial approach. Only then can the NDPS Act effectively combat drug trafficking without compromising the core values of a democratic legal order.

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