
PROLONGED PRE-TRIAL DETENTION UNDER SECTION 37 NDPS ACT: PUNISHMENT WITHOUT CONVICTION

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ABSTRACT

NDPS Act of 1985 is fundamentally the heavy arm by India to drug related crimes and the same law in Section 37 of the Act established those notorious twin conditions which actually closed the discretion of courts as far as bail is concerned. Although it was meant to put the drug dealing business on the plane, what has been experienced is a systemic issue where suspected individuals are languishing in pre-trial lockups and are essentially languishing in jail without having been convicted. This long detention, as I will argue in my paper, is not merely administrative but in fact, as punishment, it goes against the constitutional guarantee of personal liberty in Article 21 and the fundamental principle that all people are innocent until proven guilty.

KEYWORDS- NDPS, DRUG, PRE-TRIAL, DETENTION, SECTION 37, ARTICLE 21, FAIR TRIAL

INTRODUCTION-

Indian criminal justice is constructed on the fixed ideology that a criminal can be innocent until proven guilty. It is not merely one of the rules of the process what is the foundation of a fair trial, and it is pegged directly to the guarantee of liberty provided in Article 21. Bail is a crucial barrier against arbitrary detention, and it is important to ensure you are not kept in prison when even the court is yet to establish you guilty. However, a bump in that entire safety net comes from considering special legislation such as the NDPS Act², particularly Section 37, in which the court becomes gagged by a set of bail conditions, which are steel-clad.

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² <https://www.indiacode.nic.in/bitstream/123456789/18974/1/narcotic-drugs-and-psychotropic-substances-act-1985.pdf>

Section 37 of the NDPS Act introduces the so-called twin conditions of bails in case it is not just a pill or a small amount to be considered. Essentially, the judge must be certain that there is reasonable cause to believe that the accused is not guilty and also that he or she will not repeat his offence when placed on bail. This reverses the burden of proof as the prosecution would need to prove guilty and now the accused will need to prove that they are basically innocent enough to escape the charges. Such reversal is not very common in law school exams and in real life, and it also causes a number of constitutional headaches.

The practical impact of this harsh set-up of bails is that NDPS cases go on and on. Forensic work, procedural checks as well as a maze of witnesses' hold-up investigations. All this makes the trial drag and drag and the accused are left behind and are usually left behind behind bars, sometimes even longer than the period to complete the actual trial. It is a massive problem that courts are still attached to the strict guidelines of Section 37 and place such laws above the fundamental liberties of the constitution.

When you hear of people so long in the pre-trial jail system and it takes so long to be convicted makes the big question how is it really punishment when the individual does not get convicted? The distinction of preventive detention and punitive imprisonment is obscure when the under-trial prisoner is deprived of his freedom as much as a convicted one. That not only damages the assumption of innocence, but it also casts the sanity and sanity of the legal process in a bad light. There is where the judiciary comes in- to attempt to find a balance between cracking down on the drug offences and preserving the constitutional rights. This is a legitimate move of the state to prevent drug trafficking, but it cannot infringe on fundamental freedoms. So, this tension is what is examined in my paper in which I question whether the strict bail provisions in Section 37 can actually hold up to the constitutional requirement of personal liberty, at least insofar as long-term pre-trial detention is concerned.

LITERATURE REVIEW-

There has been a great deal of scholarly and judicial attention paid to the problem of bail subject to strict statutory regimes, particularly under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. There are primarily three overlapping themes that are discussed in existing

literature: the loss of the Presumption of Innocence, the impact of the restrictive bail policies on the constitution and the fact that individuals remain languishing in pre-trial detention.

Bail has been intended to safeguard against unreasonable deprivation of liberty in my reading of criminal law texts. Writers, such as Upendra Baxi and K.N. Chandrasekharan Pillai, believe that special laws are inconsistent with the principle of bailing and incarceration. They indicate that Section 37 of the NDPS Act is pushing the system to adopt a security-focused approach in which deterrence is more valued than personal rights.

The discussion has also been influenced a lot by courts. In other cases, like *Union of India v. Shiv Shankar Kesari*³. The two clauses of Section 37 as understood by the Supreme Court are in a very strict manner, a factor that supports the notion that the law is supposed to be rough. Critics believe that such interpretations make bail hearings mini trial in which judges must hear the case and determine it prior to the real trial. They claim that that is detrimental to procedural fairness and places undue burden on the accused.

A different set of literature considers the constitutional perspective, particularly, the interaction between Section 37 and Article 21 of the Constitution. According to scholars, the imprisonment of people in jail at length due to demanding bail conditions is a violation of the right to liberty and speedy trial. They refer to such cases as *Hussainara Khatoon v. State of Bihar*⁴ to indicate that delays cannot be used to promote continued incarceration. More recent holdings indicate that the courts are gradually offering on bail cases that have undergone prolonged detention, which once again highlights the constitutional safeguard.

These issues are supported by research on the under-trial population in India. It has been reported that a large percentage of individuals charged with NDPS offenses take a long period of detention before they are convicted. According to scholars, this is attributed to the tough bail conditions, delay in processes, as well as lack of proper legal assistance. That is the reason why others refer to pre-trial detention under the NDPS Act as punishment by process.

³ 2007 AIR SCW 5945

⁴ AIR 1979 SC 1819

It is also beneficial to compare other countries. In the UK and the US, the cases of drug are taken seriously but the cases of bail are normally based on risk assessment, and not strict laws. Scholars use this contrast in order to state that India needs to assume a more balanced approach.

Although there has been numerous research on this, nonetheless, there is a gap in conducting a systematic study on whether prolonged pre-trial detention under Section 37 a de-facto punishment is. The paper will attempt to bridge that gap by uniting the doctrinal, constitutional and empirical perspectives by critically looking at the question of whether the existing system of bail in the NDPS Act abides by basic principles of criminal justice.

RESEARCH METHODOLOGY-

This study adopts a doctrinal and analytical method of examining the legal and constitutional ramifications of the long pre-trial detention under the Act 37 of NDPS, 1985. My primary sources include secondary sources such as statutes, court decisions, academic articles, and official reports.

My core method is doctrinal. I am examining the NDPS Act, 1973, Article 21 of the Constitution, to find out the framing of the idea of bail and whether it is based on the already laid down legal principles.

The analysis includes a great deal of judicial decisions. I look at key Supreme Court decisions and a few High Court cases to follow the development of the jurisprudence of bail as per the NDPS Act. Cases like *Satender Kumar Antil vs CBI*⁵ are researched to determine how judges decipher the twin-conditions and whether constitutional issues influence the decisions on bails. I go through the verdicts keenly in a bid to identify the trends, contradictions and new liberal sentiments.

The research draws on empirical and policy data such as prison statistics and statistics on undertrial. I do not gather new primary information, and these secondary sources provide a background and demonstrate actual consequences of strict bail regulations. They drive home the argument that the existence of long pre-trial detention is not merely hypothetical, but systemic.

A constitutional-based evaluation analytical framework is used to evaluate prolonged detention. The concepts of presumption of innocence, proportionality, and the right to a speedy trial are some

⁵ (2022) 10 SCC 51

of the concepts that I consider when determining whether to conclude that Section 37 is following constitutional requirements

The study is also restricted to bail under Section 37 of the NDPS Act and does not include other related special laws. It concentrates on the Indian legal system, and the other countries are only used to supplement the analysis.

Concisely, the approach will provide a critical and comprehensive overview of the problem through the combination of statutory interpretation, court interpretation, and the constitutional reasoning, thus, the research is well-rounded and powerful.

ANALYSIS-

Section 37 of the NDPS Act actually functions far beyond doing what the lawmakers want. It is more of how actual individuals particularly those charged with drugs offenses find themselves in its regulations. Though this section is to prevent serious drug trafficking, it has the negative effect of providing the state an unjust level of advantage over the rights of an accused person, which leads to the obvious power imbalance.

Going through the legal theory, the actual issue is the twin conditions which the courts must examine to find innocence prior to the consideration of bail. That definitely puts the traditional criminal process in total reversal as it is the prosecution who has to prove their case and the defendant can only be declared guilty after a trial. Section 37 will undermine the Presumption of Innocence by making the innocent prove their innocence during bail detention and transforming such hearings into a mock trial. Such is not the way the procedural safeguarding of a fair trial is to operate.

The constitutional aspect of the case is even more ugly considering how many days people can remain in jail without trial. In Article 21, it is only in a situation where personal liberty is just, fair, and reasonable that it may be deprived. However, when individuals end up serving years in detention as the system takes its own time to prove guilt (instead of being found guilty), then the justice of the entire process is thrown into serious consideration. The right to a speedy trial as courts have continually borne witnesses to, is simply frittered away in this case.

Both judges have helped to loosen and tighten the grip of Section 37. On the one hand, there are such cases as *State of Kerala v. Judges* in the show of Rajesh demonstrate that they are focused on the letter of the law, deterrence is important. On the newer rulings, however, there is beginning to be a case of greater sympathetic approach to undertrials, bailed when long pre-trial jailing is obviously unfair. It is a positive change in the direction of flexibility, but it does not prevent flexibility itself.

Nevertheless, lack of consistency remains a fundamental issue of NDPS bail law. Since nobody knows what constitutes reasonable grounds, there is a widespread in the way the courts apply the law. Such uncertainty puts the concept of legal certainty to the wind and encourages unfairness, as two suspected individuals in comparable positions may emerge out of the courtroom very differently.

Taking this into consideration in terms of proportionality, it seems that keeping a person in custody without the verdict in years is too much, particularly when state aims at drug offences. The techniques, both strict bail conditions and systemic delays tend to fall short as needed and are least damaging to the rights of an accused.

The seeming punishment of pre-trial detention under Section 37 is shortsightedly disguised. The accused feel the same, deprivation of freedom, stigma and financial burden just like a convicted individual but without the due process that should safeguard them. A grey area arises between preventative detention and punitive imprisonment, and this is a great threat to the criminal justice system.

CONCLUSION-

Altogether, the bail case under the NDPS Act demonstrates a conflict between the powerful objectives of drug-controlling and the constitutional desire towards individual freedom. Although the intention of legislators was to reduce the rife drug dealing, the manner in which the shaped law takes shape, it is now harming the very individuals that it is meant to defend.

The most glaring red flag is the hangover of the long pre-trial lock which effectively transforms preventive custody into a punch-card penalty. When a person spends a long time in jail awaiting

trial, the distinction between the concepts of detention and punishment becomes blurry, which is exhausting to our courts.

Article 21 says that any limitation of liberty must be lawful, equitable and just. The inflexibility of the application of Section 37, which occurs with docket bunches, is, in general, below that standard. The right to speed trial, which is a central idea in Article 21, is invalidated when defendants are compelled to languish in prison.

This has been attempted to be remedied by the judges who have been liberal in big-delay cases. Regrettably, the changes are drops in an ocean; they do not cover the structural gaps. There is no standardized, unambiguous roadmap to decisions regarding bailing, making the situation even more out of place.

With all this, it is evident that we should adjust the system. The twin conditions of the long pre-trial custody should be read in light of constitutional protections by the courts in a bid to set these conditions aside. Lawmakers ought to step in to present stricter time frames to trials and provide stiffer bail standards.

Ultimately, the justice system is legitimate because it balances the state interests and the rights of individuals. In combating drug crime, it is imperative but there should be a price that is not paying off the basic laws. Prolonged pre-trial incarceration to become a form of de-facto imprisonment goes against justice, fairness, and due process.

The only practical method of ensuring that the law does not become an instrument of injustice is the implementation of a rights-first approach, which is based on the constitutional law. The intention should be to ensure a mechanism that maintains the presumption of innocence, the sanctity of personal freedom and can only be punished by following the legal process of dance.
