

Bail Under Narcotics Offences

Grant of bail

In view of S. 36A(3), the limitation on the power of releasing the accused on bail do not restrict the High Court's special power under S. 439, Cr.P.C.¹

Restrictions in respect of grant of bail to accused under S. 37 are not applicable to the powers of High Court under S. 439, Cr.P.C. but the High Court should bear in mind the intent and object of legislature behind the enactment of S. 37.²

Failure to file charge-sheet in respect of offences under the Act within 90 days or failure to forward the accused to Special/Sessions Court on expiry of the 15th day u/s. 86-A(1)(b) of the Act does not entitle the accused to be released on bail.³

Where an offence under the Act, remand to judicial custody of the accused beyond a period of 15 days by the Judicial Magistrate would be illegal and unauthorised. However if the challan is filed before the Addl. Sessions Judge within 90 days, the accused who is already remanded to judicial custody would not be entitled to bail.⁴

Case of narcotic under S. 9, Control of Narcotic Substances Act, 1997, would be one of further enquiry when the very drafting of FIR and recovery memos. whereby narcotic substances were recovered from accused have been rendered doubtful. High Court treating such case one of further enquiry and releasing accused on bail.⁵

Questions whether search was in contravention of S. 21, Control of Narcotic Substances Act, 1997 and whether in view of quantum of narcotic substance recovered from accused, they could be awarded a sentence attracting prohibitory clause of S. 497(1) are questions which require further inquiry under S. 497(2) entitling accused to be released on bail.⁶

Bail, grant of. Allegation against the accused was that one kilogram of Charas was recovered from the side pocket of the shirt of the accused and nine kilograms was recovered from his residential house at his pointation. One kilogram Charas could be kept in the pocket of a shirt could not be believed. Allegation of recovery had created doubt which had taken the case of the accused to be that of

1. (1991) 2 EFR 440 (443): Bom) 1991 Cri LJ 382 (385)(Bom).
2. (1992) 1 EFR 547 (555/562) (DB)(Mad).
3. 1993 Cri LJ 3473(3489) : 1993 Cri LR (Guj) 328.
4. 1994 Cri LJ 836 (838) : 1994 Raj Cri C 378.
5. 2005 CrLJ 799.
6. 2005 CrLJ 782.

further inquiry. Investigating Officer despite prior information, had searched the premises without obtaining search warrant also without associating locals with the recovery proceedings. Report in the case had been obtained from the Assistant Chemical Examiner to Government of Punjab, while the occurrence was alleged to have taken place within the jurisdiction of Police Station Haripur in Province of North-West Frontier. Legality and admissibility of report obtained and prepared in the Province of the Punjab was subject to scrutiny. Accused was ordered to be released on bail, in circumstances.⁷

Grant of bail in hardship cases. Even if Ss. 497/498, Cr.P.C. were not applicable to cases under Control of Narcotic Substances Act, 1997, the appropriate and hardship cases would attract the provisions of S. 561-A, Cr.P.C. Legislature had not excluded. The provisions of S. 561-A, Cr.P.C. in view of S. 51 of Control of Narcotic Substances Act, 1997 and it was open for the Court to press provisions of S. 561-A, Cr.P.C. in appropriate and hardship cases.⁸

Finding by DSP that accused had been falsely involved by ASI in a case under S. 9(c), Control of Narcotic Substances Act, 1997 would entitle accused to grant of bail when only 1250 grams of charas was recovered from possession of accused.⁹

While granting bail to accused in a case under S. 9(c), Control of Narcotic Substances Act, 1997, High Court finding that case of co-accused was on the same or rather better footing than that of accused. High Court calling co-accused from jail and examining his case. High Court finding that there was no evidence against such co-accused and there was no possibility of his conviction and that Trial Court had wrongly dismissed his application under S. 265K. High Court holding that case against co-accused was glaring case of abuse of powers by police and quashing the case against co-accused.¹⁰

Bail, grant of. Case of accused fell under S. 9(c) of the Control of Narcotic Substances Act, 1997 as the quantity of narcotic substances recovered from him exceeded one Kg. and did not exceed 10 Kgs. Vast difference existed in alleged recovery of narcotics from the accused as per case of the prosecution and the one shown by the Chemical Examiner in his report. Arrest of the accused in the case also needed serious consideration which could not be resolved without recording evidence. Embargo on grant of bail contained in S. 51(1) of the Control of Narcotic Substances Act, 1997 did not apply to the case of accused and the

7. 2001 MLD 1721.

8. 2002 PCHJ 186.

9. 2007 CrLJ 602.

10. 2007 CrLJ 602.

allegations made against him required further inquiry.
S. 497(2), Cr.P.C. Accused was admitted to bail in circumstances.²

Possession of narcotics. Bail, grant of. Case of further inquiry. Quantity of narcotics. Charas weighing 1300 grams was recovered from accused, out of which 300 grams were referred for chemical examination. Report of Chemical Examiner showed that instead of 300 grams, laboratory received 270 grams of Charas. According to F.I.R., encounter had been shown between police and accused party but no inquiry was sustained by either party. Effect. Where recovery of substance did not exceed the limit between 900 grams to 1500 grams, the case being borderline between clause (b) and (c) of S. 9 of Control of Narcotic Substances Act, 1997, accused should be admitted to bail. No discrepancy existed in weight shown in F.I.R. and weight of substance referred to Chemical Examiner, the case against accused was border-line case which had attracted provision of clauses (b) and (c) of S. 9 of Control of Narcotic Substances Act, 1997, and benefit of such discrepancy was to be extended to the accused. Bail was granted in circumstances.³

Bail, grant of. Accused was arrested having a shopper in his hand containing eleven small shoppers. Entire material was taken out and was weighed which was eleven kilograms of Charas. Sample was not taken out from each of the eleven small shoppers at the time of seizing and half kilogram Charas was taken out from the entire property. No conclusive findings could be recorded from the facts of the case that all the recovered material was contraband narcotics. Final findings was yet to be recorded by the Trial Court regarding recovery of eleven kilograms of Charas from possession of accused. Accused having made out a case for grant of bail, he was admitted to bail.⁵

Bail. Sessions Court by means of the impugned order had granted bail to the accused in the sum of Rs. one lac on furnishing security in the said amount. Said order had been challenged on the ground that the Sessions Court while granting bail to the accused should not have asked for furnishing security. Requirement of furnishing security in terms of S. 51(2) of the Control of Narcotic Substances Act, 1997, did not contemplate that the bail amount be necessarily deposited in cash.

2. 2000 PCrLJ 657.

3. 2011 PCrLJ 177.

5. 2007 YLR 1973.

Bank guarantee etc., but the requirement of security could also be satisfied by furnishing the document creating title to a property worth the bail amount. Petition was disposed of with the said observation.⁶

Bail, grant of. Accused was allegedly found in possession of 1500 gms. of heroin. Contention of accused was that case against him was based on absolutely false allegations and was an outcome of his father's enmity with the Police and that the recovery was fake. Accused also took the plea of his long detention for grant of bail. Validity. Supreme Court declined the grant of bail keeping in view the huge quantity of heroin allegedly recovered from the accused and directed the Trial Court to conclude the trial within a period of three months from the date of the order of refusal to grant the bail by Supreme Court.⁷

Presumptions, in absence of any convincing evidence about involvement of accused in offence under S. 9(c), Control of Narcotic Substances Act, 1997, would make out case against accused as one of further inquiry. In such case, accused would be entitled to bail even at bail stage by having benefit of doubt. High Court accepting bail applications of three accused and ordering their release on bail.⁸

Accused charged with offence under S. 9(c), Control of Narcotic Substances Act, 1997-for recovery of 78 kgs of narcotic would not be released on bail when *prima facie* accused can be connected with the crime in question. High Court dismissing application of accused for bail with direction to Trial Court to dispose of his case expeditiously.¹

Bail, grant of. Accused was apprehended in the town in broad-daylight, but no person from public had been cited as witness. Provisions of S. 25 of Control of narcotic Substances Act, 1997, did not relieve investigators of their duty of conducting investigation in a fair and transparent manner and producing the best of available evidence. Court of law had to apply its independent mind to the facts and circumstances of each case and was not bound to follow the ipse dixit of police. Version of Assistant Sub-Inspector of Police, which was not supported by any person from public, stood falsified by the subsequent report of his one superior officer i.e. deputy Superintendent of Police who, on enquiry, found that accused had been falsely implicated. Assistant Advocate-General, in, such circumstances, had rightly conceded that case was fit for the grant of bail. In all sentence of reasonable grounds for believing accused guilty of offence, accused was admitted to bail.²

6. PLD 2004 Kar. 191.

7. 2000 SCMR 1837.

8. 2006 CrLJ 306.

1. 2005 CrLJ 1065.

2. 2007 PCrLJ 139.

Second trial by Special Judge under Control of Narcotic Substances Act of accused who was either acquitted or convicted for smuggling or being in possession of narcotics would be barred by Art. 13 of the Constitution (1973) read with S. 26, General Clauses Act (1897) and S. 403, Cr.P.C. High Court in such case allowed writ petition of accused and quashing the second trial pending against him before Special Judge under Control of Narcotic Substances Act.³

Main accused was apprehended for being in possession of 2 Kg. of heroin and during course of investigation in his statement under section 161, Cr.P.C. main accused implicated petitioner. There were no corroborating independent circumstances/witness to connect petitioner with commission of offence. Investigating agency did not care to make any efforts to record statement of main accused under section 164 or 364, Cr.P.C. Mere statement of principal accused under section 161, Cr.P.C. is not sufficient to connect petitioner with commission of offence, carrying penalty of death. Thus *prima facie* case for purpose of bail has been made out by petitioner. Bail granted.⁴

Bail, grant of. Recovery of 43 kilograms of heroin from the accused by Anti-Narcotics Force. Accused was nabbed by Anti-Narcotics Force after a hot pursuit and hide and seek chase. Offence was punishable with death. Embargo to bail was fully attracted and the same being extremely stringent could be pressed into service only when the person charged with an offence punishable with death under the Control of Narcotic Substances Act, 1997 was *prima facie* and reasonably connected with the crime. Bail was declined in circumstances.⁵

Woman accused involved in a case under S. 9(c), Control of Narcotic Substances Act, 1997 who was found in conscious possession of 15 kgs of charas wrapped around her body. Recovery effected from accused after search from body of accused by lady head constable. Bail prayed *inter alia* on ground that search from accused was not in accordance with law. High Court holding that search was in accordance with S. 52, CrPC and dismissing bail application as case of accused fell under prohibitory cause of S. 497(1).⁶

Bail, grant of. Further inquiry. Point agitated by the counsel for accused regarding recovery and quantity of narcotics etc., required thorough scrutiny by the Trial Court. Trial Court was supposed to sift the grain from the chaff and thrash out the illegalities/anomalies and discrepancies on the part of prosecution if any. When the Court was of opinion that in presence of available record, there was little doubt that the offence was not punishable with death, imprisonment for life or ten years and there was sufficient scope for further inquiry, accused could be released on bail as in the circumstances of the case it would become a fit case for further inquiry. Merit of case need not be discussed lest the same might prejudice/influence the mind of Trial Court. Bail was allowed to accused.⁷

3. NLR 2000 Criminal Lab. 652.

4. PLJ 2000 Cr.C. (Pesh.) 1527 (DB).

5. 1999 PCrJ 728.

6. 2005 CrLJ 644.

7. 2007 PCrJ 1113.

Bail, grant of. Principal accused had charged the accused in his statement recorded simply under S. 161, Cr.P.C, which was usually not seriously taken by the Courts. Investigating Agency had not cared to make any efforts to record the statement of the principal accused under S. 164 or 364, Cr.P.C. Mere statement of principal accused under S. 161, Cr.P.C. was not sufficient to connect the accused with the commission of the offence carrying penalty of death. *Prima facie*, case for the purpose of bail having been made out by the accused, he was admitted to bail.⁸

Bail, grant of. Further inquiry. Accused had levelled allegation of enmity against complainant/D.S.P. under whose jurisdiction police station concerned was situated. In view of such recorded enmity between functionaries of police station concerned and accused, investigation, in all fairness should have been entrusted to some other Police Agency so that the true picture had emerged after fair and independent investigation. Such course had not been adopted and on the contrary highly interested and inimical police officials had investigated the case against accused which under law they were not competent to do which had further cast doubt on the fairness of the investigation and credibility of story. All such points required deeper appreciation of evidence, which could be done at the time of trial and could not be undertaken at bail stage as it was the function of the Trial Court to appreciate and assess the evidence. Point as to whether 56 Kgs. of Charas could be out under a passenger seat of a Jeep, required consideration because apparently such huge quantity could not be a cumulated under such seat. Such point, however, required deeper appreciation of evidence, which could not be undertaken at bail stage. Tentative assessment of the material placed before the Court revealed that case of accused required further inquiry within the meaning of S. 497(2), Cr.P.C. Accused were entitled to concession of bail and they were admitted to bail, accordingly.¹

General

A decision in bail application, even if it is a reasoned decision, is strictly confined to the facts of that case alone and does not create any precedent.²

Grant of bail is a discretionary matter. It is true that Court should write speaking order particularly where certain requirements are laid down by the law to be followed.³

The provisions contained in S. 37 of the Act would override the earlier general provisions of S. 18 of the Juvenile Justice Act and consequently a juvenile delinquent being accused of commission of an offence under the Act cannot be released unless the pre-conditions contained in S. 37 are complied with.⁴

If the accusation is that a person is in possession of poppy husk, then he is entitled for bail under S. 37 provided prosecution is heard in the matter and Court

8. 1999 PCrLJ 808.

1. 2007 PCrLJ 1103.

2. 1994 CrLJ 2165; AIR (1994) 1 Bom CR 1.

3. (1994) 2 Cur Cr R 1194 (1195) (MP).

4. 1993 CrLJ 1908 (1914); 1993 Orissa Cr R 296.

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comes to conclusion that no reasonable grounds are made out so as to connect the petitioner with the offence alleged.⁵

Where no case was made out by the prosecution so as to connect the accused to the possession of the Ganja and further the accused also assured that he would not tamper with the evidence, he would be entitled to be released on bail.⁶

Accused can file successive bail applications. Dismissal of earlier application is not bar to filing of another application.⁷

[See however]⁸

Where earlier bail application was dismissed because the case was still under investigation, successive bail application filed after completion of investigation and filing of challan would be maintainable.⁹

In the matter of bail the Court has to exercise judicial discretion. The nature and gravity of the circumstances in which the offence was committed and availability of the accused at the time of the trial play an important rule in this connection. The facts that the applicants were possessing and transporting the opium in a large quantity and that they were residents of another state militate against the concession pray for by them.¹

The concept of speedy trial which falls within the sweep of Art. 21 of the Constitution is attracted in cases under the NDPS Act and the accused thereunder are entitled to be enlarged on bail if inordinate delay in trial is shown.²

[See however]³

The Court has no power to grant bail on ground of illness of the wife of the accused. Similarly the Court has no power to grant interim bail or extension of the period of interim bail already granted.⁴ (Temporary bail to applicants cannot be granted for taking medical treatment. It was directed to the applicants to get themselves treated in the private hospital under the escort of police authorities instead of asking for bail).

In the matter of granting bail, the prohibition contained in S. 37 of the Act, applies to the offences covered by S. 20(b)(ii) of the Act.⁵

5. (1992) 2 Crimes 415 (416)(P&H) AIR (1996) 2 Orissa LR 293 (294) (1995) 1 Cur Cri-R 195 (195)(Raj) AIR (1991) 71 Cul LT 839 AIR (1989) 3 Bom CR 228 (231).

6. 1992 Cri LJ 205 (214) : (1992) 2 Crimes 1003 (Kant).

7. 1996 APLJ (Cri) 249 (253) : (1996) 2 APLJ 209.

8. (1995) 2 Bom CR 557 (560)

9. (1992) 1 EFR 172 (172) (Kant)

1. 1989 EFR 652 (656) (All).

2. 1996 AIHC 1751 (1753) (Raj) AIR 1989 Cri LR (Raj) 498 (499) : 1989 EFR 781.

3. (1992) 1 Cri LC 94 (101)(Delhi) AIR (1991) 45 DLT 100 (103).

4. (1989) 17 Delhi Rep J 257 (259) : (1989) 3 DL 431 AIR (1992) 2 Mah LR 799 (800)(Bom).

5. 1992 Cri LJ 491 (493) : AIR (1992) 1 Cri LC 468 (Orissa).

Even if the Magistrate had granted the remand of accused beyond 15 days it cannot be a ground to grant bail to the accused as special Judges are not appointed in the State who could grant the remand beyond the period of 15 days.⁴

Where the petitioner was involved in serious offence in which 18 gms. of Charas and several automatic weapons of foreign make were recovered but the petitioner was in custody for nearly two years and still the trial was not completed, the Court was left with no choice but to grant bail.⁵

Where the co-accused was released on bail, the accused involved in the same offence would also be entitled to bail.⁶

Bail could be granted to accused under NDPS Act by High Court, even if the trial is in progress, in view of principles of natural justice and innocence applicable to criminal law.⁷

When the accused challenged the statements recorded by police as statements obtained by coercive and violent methods, the Court can consider and weigh this fact at the time of deciding his bail application.⁸

Failure to file charge-sheet in respect of offences under the Act within 90 days or failure to forward the accused to the special/sessions Court on expiry of the 15th day under S. 36-A (1)(b) of the Act does not entitle the accused to be released on bail.⁹ (Compliance with the provisions of S. 37 is mandatory before releasing an accused on bail even after expiry of 90 days).¹

In the case of granting bail u/s. 37 of the Act, the delay in trial for not receiving forensic science laboratory report 'per se' would not be a ground for grant of bail.²

Accused in a case for offences u/ss. 9(c) and 15 Control of Narcotic Substances Act, 1977 discharged by judicial Magistrate. Subsequently, allegedly made that Judicial Magistrate had discharged accused by accepting bribe which led to registration of case u/ss. 9/15, Control of Narcotics Substances Act, 1977, u/ss. 219, 223, 109, 120B PPC and u/s. 15(2) Prevention of Corruption Act (1947) against Judicial Magistrate. After his arrest in the case registered against him, Judicial Magistrate admitted to bail by Special Judge seized with trial of the case. High Court *suo motu* issuing notice for cancellation of bail to Judicial Magistrate.

4. (1996) 2 EFR 219 (219) : (1996) 1 Rec Cri R 221 (1996) 2 All Cri LR 703 (704) : (1996) 3 Chand Cri C 538.
5. 1989 Raj Cri C 444 (445) : (1989) 1 Rajasthan LR 655.
6. (1996) 1 Mah LR 418 (424) : (1997) 1 Cur Cri R 98 (Bom) (1994) 2 EFR 546 (549)(MP).
7. (1996) 2 EFR 223 (224) : (1996) 23 Cri LT 46 (1996) 2 EFR 225 (225) : (1996) 1 Rec Cri R 757.
8. 1990 Cri LJ 2201 (2207) : (1990) 1 Bom CR 451.
9. 1993 Cri LJ 3473 (3490) : 1993 Cri LR (Mah & Guj) 328 (Guj) 1995 Cri LJ 732 (734) (Mad).
1. 1989 Raj Cri C 285 (286) : (1989) 2 Rajasthan LR 149.
2. 1994 Cri LJ (NOC) 361 : (1993) 1 Raj LR 517.

order of High Court initiating *suo motu* proceedings challenged before Supreme Court through leave petition. Supreme Court taking view that in view of well-reasoned order of Special Judge granting bail to accused Judicial Magistrate High Court was not justified in initiating *suo motu* proceedings against accused Judicial Magistrate. Supreme Court converting leave petition into appeal, allowing appeal and quashing *suo motu* proceedings before High Court.³

Vast difference existed in alleged recovery of narcotics from accused as per case of prosecution and one shown by Chemical Examiner in his report. Arrest of accused in case also needed serious consideration which could not be resolved without recording evidence. Embargo on grant of bail contained in Section 51(1) of Control of Narcotic Substances Act, 1997 did not apply to case of accused and allegations made against him required further enquiry as contemplated by Section 497(2), Cr.P.C. Accused was admitted to bail in circumstances.⁴

Bail application against. Contraband heroin weighing 15 Kg. was recovered from motor-car which was being driven by petitioner. Said car was borrowed by petitioner from A. "Legality and propriety of confessional statement cannot be scrutinized at bail stage. Petitioner is previously involved in case u/ss. 3/4, P.O., whereby 60 Kgs. of Charas was recovered from section who named petitioner as his associate. Conduct and involvement of petitioner in dealing with psychotropic drugs makes case of petitioner meritless. Offence is punishable with death or imprisonment for life. Petition dismissed.⁵

Bail, grant of. Only ten grams of narcotic was sent for chemical examination. Allegations as to the enmity as alleged by accused under the political set up, could not be altogether ruled out. Accused was extended benefit of bail, in circumstances.⁶

Refused bail by not accepting plea that provisions of S. 103, Cr.P.C. had not been complied with. It was held that (i) The Court has no soft corner for traffickers of narcotics who care less about younger generation of the nation as toll of addicts is increasing at alarming speed. (ii) It is this group who had always brought bad name to the country in the international community by supplying narcotics beyond the border.⁷

One should keep in mind that enactment of Act was necessitated for reasons and object to consolidate the narcotic laws. One cannot shut one eye to the prevailing business of drug pushers who for their monetary gains have caused loss to the society in general. The persons involved in immoral business of drugs are to

3. NLR 2000 Criminal SC 274.

4. PLJ 2000 Cr.C. (Kar.) 1107 (FB).

5. PLJ 2000 Cr.C. (Pesh.) 941.

6. 2007 PCrJ 1019.

7. 2001 UC 152.

be discouraged and Court should not come to their rescue by entertaining their bail applications on academic questions or by giving them the benefit of bail by interpreting statutes favourable to them.⁸

Case of accused facing charge under S. 9(b), Control of Narcotic Substances Act, 1997 would be one of further inquiry when Zimnis of police file and statements of witnesses under S. 161, CrPC were recorded by Police Constable on dictation of I.O. High Court in such case accepting bail petition and ordering release of accused on bail.⁹

Bail, grant of. Further inquiry. Co-accused had been admitted to bail and Court while granting bail to co-accused had observed that no legally incriminating material was on the file. Role of accused and his co-accused who had been allowed bail, was of identical nature in F.I.R. Investigating Officer during course of investigation found that accused had no role in the occurrence and that he had been falsely implicated. Case against accused being of further inquiry, he was admitted to bail.¹

Perusal of case diaries would show that Court orders are not complied with for no sound reasons. Applicant had remained in continuous custody for a period of nearly two and half years and as expressed by High Court in an earlier decision passed in another case. Special Court which is now Sole Court for entire Karachi Division is seized of more than 1000 cases. Keeping in view pace of progress even in cases containing Court direction and keeping in view unreported decision of Hon'ble Supreme Court, Court is inclined to grant bail to applicant.²

Non-association of private and independent witnesses with recovery in a case under S. 9, Control of Narcotic Substances Act, 1997, would by itself be no ground for bail, particularly when it is shown that efforts were made for procuring persons from public but they declined.³

Bail. Phenobarbital powder weighing 20 kilograms recovered from the accused was psychotropic substance and thus, an offence under S. 6 of the Control of Narcotic Substances Act, 1997 was *prima facie* made out against him. Keeping in view the quantity of the recovered material the offence was punishable under S. 9(c) of the said Act with death which had attracted the bar contained in S. 51 of the same Act against the grant of bail. Accused was not holding any licence for purchase or retraining the Phenobarbital powder in his possession in such a large quantity. Phenobarbital powder, no doubt, was also covered by the definition of "drug" under S. 2(g) of the Drugs Act, 1976 and the same was used for medical

8. 2003 CrJ 106.

9. 2006 SC 255.

1. 2007 MLD 623.

2. PLJ 2001 (Kar.) 646 (DB).

3. 2005 CrJ 719.

purposes also, but this by itself would not bring the case of accused within the ambit of exception as provided under S. 6 of Control of Narcotic Substances Act, 1997. Bail was declined to accused in circumstances.⁴

Bail. No direct or indirect evidence as available to connect the accused with the commission of the offence. Accused was neither arrested from the spot, nor any contraband was recovered from her possession. Statement of co-accused recorded under S. 161, Cr.P.C. during investigation implicating the accused was inadmissible in evidence. Case against accused, thus, needed further inquiry. No identification parade had been held in the case. Accused being a "Pardanasheen" woman, her case was covered by first proviso to S. 497(1), Cr.P.C. Challan had not so far been submitted in the Trial Court and keeping the accused in jail could not serve any useful purpose. Accused was admitted to bail in circumstances.⁵

Bail refusal of. Charas weighing 2 Kilograms was secured from the possession of accused and whole quantity was sent for Chemical Examination. In the absence of established or reasonably convincing material to demonstrate malice, it appeared difficult to assume that such a huge quantity of narcotics could be foisted by Anti-Narcotic Force upon lady/accused. Nothing had been placed on record to show that accused or for that matter the tribe to which she belonged had any enmity with the police. Bald allegation of extortion of golden ornaments by the police, could not be supported by a mere authority letter purported to have been voluntarily signed by the lady/accused from the jail in favour of her husband, to create a doubt at bail stage, that too under a special law. No material was available on record to assume that any connection of Anti-Narcotic Force was with the rival tribe as pleaded. Plea of violation of the provisions of S. 103, Cr.P.C. would not hold the ground in view of specific exclusion of its applicability under the statute. Alleged offence fell within the prohibitory clause of S. 497, Cr.P.C. as it attracted the sentence of 14 years' R.I. Merely because accused was a lady by itself would not entitle her to grant of bail in the given circumstances. Case being not fit one for grant of bail, bail application was dismissed.⁶

Bail. Recovery of heroin from the accused had been witnessed by the officials of Anti-Narcotic Force who had supported the same in their statements made under S. 161, Cr.P.C. Laboratory test report in respect of the samples of the recovered material was in positive. Recovery of the contraband heroin was effected not only from the direct possession of the accused but also on their pointation from under the rear seat of the car. Reasonable grounds thus appeared for believing the accused guilty of the offence punishable with death or imprisonment for life for being in possession of huge quantity of contraband heroin. Case of co-accused having been released on bail was distinguishable from the case of accused. Bail was

4. 2001 PCTJ 1792.

5. 2001 PCTJ 1756.

6. 2007 PCTJ 1615.

declined to accused in circumstances. High Court, however, directed the Trial Court to conclude trial within four months failing which the accused would be at liberty to move application before the said Court for their release on bail.⁷

Bail, grant of. Allegedly the police took action on the spy information that accused was selling Charas. No indication existed that any sale proceed was recovered from the accused. No attempt of introducing a dummy purchaser nor any of the customer who had purchased or had intended to purchase narcotics from accused, had been made. Number of pieces and their separate weight had not been recorded nor the samples had been distinctly obtained from each of such pieces. Such was a major defect which was supplemented by the fact that there had been unexplained abnormal delay of one month in dispatching of the material to the Chemical Expert. Accused was not a previous convict and the maximum punishment likely to be imposed in the case did not attract the prohibitory provision S. 497, Cr.P.C. Accused was admitted to bail, in circumstances.⁸

Bail, grant of. Two type of Charas *i.e.* "Pukhta" or consolidated and "garda" were sent to Forensic Science Laboratory for Chemical examination and both had been opined to be Charas, but without specifying which one of the parcels was Charas "Pukhta" or in consolidated form; and which parcel was containing "garda charas". Accused was admitted to bail in circumstances, and because of no previous involvement of accused in offence of such nature.⁹

Bail. No psychotropic substance was recovered from the accused who was arrested from his house on the allegation made by co-accused during investigation that he had purchased the alleged psychotropic substance from the accused and had also produced the receipt thereof. Other prosecution witness in his statement recorded under S. 161, Cr.P.C. had not specifically charged the accused with the sale of the said substance to the co-accused, but he had only stated about the sale of some chemical to him. Accused was admitted to bail in circumstances.¹

Accused involved in a case under S. 9, Control of Narcotic Substances Act, 1997 and charged with recovery of 1040 grams of Charas would not be entitled to bail when there is sufficient material on record to connect him with the offence. Contention for accused that recovery was made in violation of mandatory provisions of S. 103 repelled as recovery had been made in accordance with mode laid down in S. 25 of Control of Narcotic Substances Act, 1997.²

Female accused with suckling baby involved in a case under S. 9, Control of Narcotic Substances Act, 1997, released on bail on ground that case against accused was on border line of clauses (b) and (c) of S. 9.³

7. 2001 MLD 142.

8. 2007 YLR 1728.

9. 2007 YLR 1822.

1. 2001 PCrJ 1792.

2. 2002 CrLJ 50.

3. 2005 CrLJ 820.

Accused involved in a narcotic case under S. 9, Control of Narcotic Substances Act, 1997 released on bail in light of young age of accused, the low quantity of charas recovered from him and misconduct of investigation of the case.⁴

Bail in a case u/s. 52, Control of Narcotic Substances Ordinance, 1997 has to be moved before Special Court Anti-Narcotics. Bail can be moved directly in High Court in very special cases liked political victimization as laid down in Note 2 of rule 14, High Court Rules and Orders, Volume III, Chapter X. High Court disposing of bail petition to enable petitioner to move it first before Special Court Anti-Narcotics who would decide it within seven days.⁵

Bail petition against. Section 25 of C.N.S.A. excludes application of Section 103, as special procedure has been laid down and special provisions have been made regarding search, therefore, general provisions shall not apply to subject in question. Old age itself is not a ground on which bail shall have to be granted under all circumstances. Petitioner being more than 50 years do not qualify to be of old age. Petition dismissed.⁶

Bail, grant of. Case of further inquiry. Quantity of narcotics. Tentative assessment of evidence. During raid, police arrested three persons and recovered 25 kilograms of Charas. Persons arrested from the spot were exonerated during investigation. Accused was arrested on the pointation of exonerated accused person who was neither cited as prosecution witness, nor accused was put to identification test. Contention of prosecution was that under S. 51 of Control of Narcotic Substances Act, 1997, bail could not be granted to accused, as huge quantity of narcotic was recovered. Validity. Such contention of prosecution was without any weight. Quantity could be given importance only when the same was linked with accused by content evidence. Ban contained in S. 51 of Control of Narcotic Substances Act, 1997, would be attracted only when there were reasonable grounds for believing that accused was guilty of the alleged offence. High Court was competent to grant bail in appropriate cases notwithstanding the provisions of S. 51 of Control of Narcotic Substances Act, 1997. No reasonable grounds for believing accused guilty of offence being available, and matter required further inquiry into guilt of accused, bail was granted to accused in circumstances.⁷

4. 2005 CrLJ 1139.

5. 1999 UC 143.

6. PLJ 2000 Cr.C. (Pesh.) 1024.

7. 2007 PCrLJ 89.

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4. 2005 CrLJ 1139.

5. 1999 UC 143.

6. PLJ 2000 Cr.C. (Pesh.) 1024.

7. 2007 PCrLJ 89.

Non-compliance with provisions of Chapter V of Act. Effect.

In cases where mandatory provisions of law have not been followed, the person has a right to be bailed out. Where the mandatory provisions are complied with, then only provisions of S. 37 would come into play therefore, bail can be allowed in cases where there is violation of the mandatory provisions of the Act.⁸

¹[Overruled Dissented from] [But see]

[But see]²

The question of non-compliance with the provisions of Ss. 41 to 58 can be looked into even at stage of granting bail, in view of the provisions of S. 37 of the Act.³

[See however]⁴

It is the duty of the Police Officer who is making search to inform the person arrested that he has right to be searched in the presence of a designated Gazetted Officer or a Magistrate, this requirement of law is mandatory and non-compliance of the same can be a ground for bail.⁵

Merely to say that accused has been prejudiced on account of non-sending of a special report to superior Officer under S. 57 would not be sufficient to hold that there is prejudice to petitioner. The fact will have to be gone into Trial Court and no bail can be granted on ground.⁶

Search and seizure. Recovery of narcotic drugs effected in presence of Gazetted Officers at the option of accused. Accused would not be entitled to bail

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8. 1992 UP Cr R 540 (543)(All) : (1997) 67 Delhi 1 T 452(453)(Delhi) (1997) 3 Rec Cr R 440 (441) (P & H) (1996) 1 Cur Cr R 514 (515, 516) : (1996) 2 Crimes 264 (1996) 2 EFR 151 (152) : (1996) 2 Crimes 333 1995 Cri LJ 875 (881)(Bom) (1995) 1 Chand Cri C 10(1)(Delhi) 1994 Cri LJ 3 : 1993 All LJ 4300 (1304) 1994 UR Cri 99 (99)(All) (1994) 1 FAC 284 (285)(Bom) (1994) 1 FAC 283 (284)(Bom) (1994) 1 Crimes 990 (995) (Mad) (1994) 1 Crimes 686 (686)(Mad) 1994 Cri LJ (NOC) 380 : (1994) 73 ELT 282 (Mad) Orissa Cri LJ 461 (462) 1993 Cri LJ 1785 (1794) All (1991) CrilJ 2239 (All). 1989 EFR 283: 1991 (3) Crimes 775.
Disputed from.
1. 1993 Cri LJ 94 (100)(Kant) (1992) 2 EFR 486 (491) (All) (1992) 2 EFR 9 (10)(Bom) (1992) 2 Crimes 565 (567/568)(P & H) (1992) 2 Crimes 35 (Raj) (1991) 2 EFR 92 (93) (All) 1991 Cri LJ 2185 (2187)(Orissa). (1991) 2 All Cri LR 238 (239) (Pun. Har) 1991 Cri LR (Raj) 670 (671) (1991) 2 EFR 257 (258)(Raj) 1991 Cri LR (Raj) 620 (621) 1990 Cri LJ 1990 (1997)(MP) (1990) 2 Chand Cri C 603 (608) (P & H) 1987 Raj Cri C 91 (92) : 1987 Cri LR (Raj) 524.
2. (1994) 2 EFR 553 (585) All (1994) 1 FAC 270 (274)(Bom) 1994 Cri LJ (NOC) 463 : II R (1994) (1994) Kant 1516 1994 Cr LJ (NOC) 436 : 1994 Jab LJ 706 (MP) (1992) 1 Orissa LR 421 (436)(DB) (5) Cri Misc. Case 1196/91. dated 4.10.1991. overruled.
3. 1992 Cri LJ 399 (403)(Bom) 1992 All Cri R 252 (257).
4. (1992) 2 Chand Cri C 164 (166) Delhi.
5. (1992) 2 EFR 486(490)(All).
6. (1994) 29 Delhi Rep J 65 (66).

even assuming that recovery was not effected as desired by accused. It would be too early to say whether any prejudice has been caused to petitioner if the investigation has not been conducted in the manner as desired by him.⁷

Criminal P.C. (2) of 1974), S. 439. Bail. Court not obligated to consider question viz. whether there is non-compliance of mandatory provisions under S. 50 of N.D.P.S. Act. Also for such non-compliance release of under trial prisoner on bail is not permissible.⁸

So far as the non-compliance with the procedure in effecting the arrest or containing the detention of an accused is concerned, the restraints, u/s. 37(1)(b) of the Act would not apply.⁹

Illustrative cases

Where the only material against the accused was confession of co-accused person which could not establish *prima facie* case against accused, the accused was released on bail.¹

Where bail is granted to the accused challaned under Ss. 8 and 21 of N.D.P.S. Act, without affording opportunity to resist the bail, to the prosecution, cancellation of bail would be proper, as mandatory provisions of S. 37 cannot be violated in any manner.²

Where conditions under S. 37 are not satisfied accused is not entitled to concession of bail.³

Where accused was in custody of more than 60 days but no prosecution report was submitted, he is entitled to be released on bail.⁴

Failure to mention in the First Information Report or in the seizure list, specifically about recovery of Ganja from the house of the petitioner with seeds and tops of the cannabis plant would not entitle the accused to be released on bail.⁵

When the detention was by competent person and it was not illegal, delay in disposal of cases under N.D.P.S. Act would not entitle the accused for grant of bail.⁶

7. 1997 Cri LJ 2827 (P & H).

8. 1997 Cri LJ 101(MP).

9. 1993 Cri LJ 260(270) : 1992 Orissa Cri R 31.

1. 1991 Orissa CR 216 (219) (1997) 1 EFR 607 (608)(MP 1997 Cri LJ 6 (Orissa).

2. (1997) 2 Cur Cri R 241 (242) (All).

3. (1991) 2 All Cri LR 856 (857)(Punj & Har).

4. 1991 Orissa CR 162 (163).

5. (1994) 2 Pat LJR 645 (646).

6. (1991) 3 Crimes 871 (873)(DB)(Raj).

Where the only evidence against the accused was his statements recorded under S. 67 of the Act, bail was granted to him.⁷ (Accused himself confessed before the authorities his involvement in clandestine possession and trafficking in heroin, the bail granted would be liable to be set aside).

Where petitioner who was on bail failed to appear before Court due to illness and produced medical certificate which was rejected by Trial Court and hence petitioner filed affidavit of Doctor in Court, it was found to be fit case for grant of bail.⁸

Where the opium recovered from accused was of small quantity i.e. only 725 grams, bail was granted to him.⁹ (Only 12 Kgs. of poppy husk was recovered from accused who was not proved to be a habitual or previous offender, he could not be kept in judicial custody by way of penalty).¹

Where the report of the Chemical Analyst had not been received, and there was nothing on record to show with certainty that the article seized from accused was poppy husk, bail was granted to accused.²

Search and seizure. Non-compliance with provisions of S. 42(1). Search after sunset. Reasons not recorded. Information given by another accused from whom Charas was seized after 8.00 p.m. Reasonable apprehension that accused would escape or conceal contraband if search not done immediately. Warrant or authorization could not be obtained due to lack of time. Copy of complaint sent to Magistrate and superior Officer. No possibility search was illegal, it would not affect seizure and validity of trial. Such recovery admissible in evidence. Accused *prima facie* guilty of offence. Bail application rejected.³

Where order of remand of accused was not in printed form and on reverse side of it only two dates were mentioned in front of which signature of remanding Court was taken, such remand cannot be said to be legal and hence accused was entitled to be released on bail.⁴

Where substance used for manufacture of brown sugar was recovered at instance of accused and there were no grounds to believe that accused was not guilty of offences under NDPS Act, bail application was rejected.⁵

7. 1997 Cri LR (MP) 48 (49) 1992 Cri LJ 2143 (2146) : (1991) 2 Crimes 785 (Mad).

8. (1996) 1 Chand Cri C 39 (39).

9. (1996) 1 CCJ 259 (260) (1996) 1 All Cri LR 306 (306) (1996) 2 Rec Cri R 699 (700).

1. 1994 Orissa Cri R 342 (344) 1988 Cri LR (Raj) 313 (314) 1988 Cri LR (Raj) 34 (34).

2. (1996) 1 CCJ 428 (428).

3. 1997 Cri LJ 1250 (Bom) 1993 UP Cri r 112 (112)(All).

4. (1992) 1 EFR 307 (307) (All).

5. 1995 Cri LJ 2967(2969)(Raj) (1994) 2 FAC 346 (348)(All) (1992) 2 Rec Cri R 244 (246) (P & H)

Where the accused was alleged to have been engaged in smuggling activity and the information as to his antecedents did not rule out the possibility of his being not available for trial and repeating the activity if bailed out, the applicant could not be bailed out in the facts and circumstances of the case.⁶

Where poppy husk alleged to be recovered from possession of accused and as per allegations made in FIR though independent witness was associated with police party but sample seal was not entrusted to him, the accused on facts and circumstances would be entitled to be released on bail.⁷

When the accused was arrested on mere suspicion as a complaint was lodged earlier against him for offence under Ss. 8, 21, 22 and his signatures were not obtained on sealed packet, containing the contraband allegedly recovered from him, then he could be enlarged on bail.⁸

Where the accused was identified on the spot of occurrence and his name was given in the FIR he would not be entitled to bail.⁹

Where the accused was allegedly found in possession of 40 gms. of Charas and within a short span of time, two different cases were also lodged against him, the allegation of prosecution that the accused is a habitual offender cannot be ignored and therefore the bail granted to accused was cancelled.¹

Where accused was chargesheeted and case fixed for prosecution evidence and the witnesses were all police personnel who could not be tampered with by accused who was also not a previous convict, the accused was released on bail.²

When the accused was alleged to have cultivated cannabis plant however there was no evidence of cultivating activities like weeding, sowing, watering done by him and chemical report was also not supporting that the growth was of Ganja, the accused would be entitled to bail.³

Where a charge was framed against the accused u/ss. 23 and 29 of the Act but there was no evidence to prove conspiracy and even the so-called confession of the accused was made when the accused was in the custody of the officials but the same was retracted in the presence of the Magistrate, it would be a fit case for granting bail particularly when the alleged co-conspirator was already released on bail.⁴

6. 1989 MPLJ 471 (475) : 1989 EFR 768.
 7. (1996) 1 Chand LR (civ & Cri) 35 : (996) 1 Chand Cri C 98 (P & H).
 8. 1994 UP Cri R 408 (409)(All).
 9. (1996) 1 C CJ 536 (536) (1992) 1 Rec Cri R 7 (8) (P & H).
 1. (1996) 1 Cur Cri R 81 (83) : 1996 1 EFR 403.
 2. (1997) 1 Rec Cri R 572 : (1997) 1 EFR 446 (446).
 3. 1996 Cri LJ 3787 (3789)(Raj).
 4. 1994 Cri LJ (NOC) 51 : (1993) 1 Chand Cri C 120 (Delhi).

Where the accused claimed bail on ground that the seal of another police officer who was member of raiding party was affixed instead of the S.H.O. and the S.H.O. was yet to be examined in that regard, the genuineness of search cannot be doubted on that ground and the accused would not be entitled to bail on that ground.⁵

Where the petitioner was allegedly found in possession of poppy straw and the report of chemical examiner showing that samples were of poppy straw and the quantity recovered being 50 bags, it would not be fit case for granting bail.⁶

Where 6 quintals of opium poppy husk was recovered from accused but he was no longer required for investigation, bail was granted to him.⁷

Where the petitioner is under detention for almost two years and the alleged poppy husk which was carried on a camel was not recovered from the actual physical possession of the petitioner, the petitioner in facts and circumstance of the case is entitled to be released on bail.⁸

Where bail for offence under N.D.P.S. Act lingered for number of months and prosecution witnesses were not present on many dates and Presiding officer was also out of station for many days. Fundamental right to speedy trial being violated, accused is entitled to bail.⁹ (Accused already in jail for over three years. Requested for a bail either regular/interim to facilitate making arrangements for children's education, though he would not entitled to regular bail in view of S.37, he can be enlarged on interim bail for 3 months).¹ (To enable the applicant to make necessary arrangement for education of his children, he was released on interim bail for a period of three months).²

[See however³

Where the police officer who had arrested and searched the accused and seized the contraband had undertaken further investigation, such investigation by the same police officer raises doubt regarding genuineness of seizure and investigation and in the circumstances accused would be entitled to bail.⁴

5. 1994 Cri LJ (NOC) 408 : (1993) 2 Chand Cri C 409 (Delhi).

6. (1993) 1 Cri CJ 162 (163) (P & H).

7. 1989 Cri LR (Raj) 525 (525) : 1989 Raj Cri C 384.

8. 1994 Raj Cri C 566 (567).

9. 1995 AIHC 1720 (1722)(Raj) 1994 Cri LJ (NOC) 315 (Delhi).

1. (1994) 1 Chand Cri C 18 (20)(Delhi).

2. (1994) 2 Chand Cri C 288 (289)(Delhi) (1991) 1 Chand LR (Cri) 386 (386) (P & H) 1987 Cri LR (Raj) 429 (430).

3. (1991) 3 Crimes 11 (14) (Delhi).

4. (1996) 2 All Cri LR 267 (268) : (1996) 3 Crimes 259.

As 'bhang' is not covered by the Act, accused found with 2 kg. of 'bhang' on his person would be entitled to be released on bail.⁵

Fact that accused was allegedly detained illegally and unauthorisedly u/s. 36-A(1)(b), would not be a ground to release them on bail.⁶ **Held not good law** in view of 1991 (1) Recent CR 338).

Where recovery of opium was made from dicky of scooter which did not belong to petitioner and petitioner was not having knowledge as to what was kept in dicky, it is a fit case for grant of bail.⁷

Where the allegations against the petitioner were that he was travelling in fictitious name and with a fictitious passport in the ship from which Hashish and Opium were recovered and the alleged offences were committed in Bombay and Jeddah and the Magistrate of Bombay was seized of the matter and the investigation was going on, in the circumstances, the mere fact that the case was registered at Delhi because the head office of CBZ was at Delhi would not give Delhi Court jurisdiction to grant bail. Application for bail has to be preferred before Bombay Court.⁸

Where 'matha-quolence powder seized' was manufactured by accused at the instance of the other accused who acquired a raw material which was a contraband commodity and it was disclosed that said activities of the accused were likely to be repeated, rejection of bail application is proper in the circumstances.⁹

Bail. Possession of 'ganja'. Accused pleading 'ganja' was for personal consumption. No evidence to prove accused indulging in purchase and selling of it. Offence punishable for six months. Rigours of S. 37 not applicable. Accused entitled to bail.¹

Where contraband was recovered from premises of accused person and no materials were produced by either party that the accused persons are not likely to commit any offence if released on bail, bail was not granted.²

Section 37 of the Act does not provide absolute bar to grant bail and it cannot also be rejected merely on the ground that some material has been found

5. 1988 Cri LR (Raj) 34 (34).

6. (1995) 1 All Cri LR 20 (220 (P & H). (1992) 2 Crimes 353 and 1994 (1) CLR 336.

7. (1996) 2 Chand Cri C 12 (12): 1996 2 EFR 21.

8. (1991) 2 All Cri LR 111 (113, 115)(Delhi).

9. (1996) 3 Mah LR 605 (608)(Bom).

1. 1996 AIHC 448 (Raj) 1994 Cri LR (Raj) 628 (628) 1994 cri LR (Raj) 627 (627) (1992) 1 Chand Cri C 8 (P & H).

2. 1995 Cri LJ 3307 (3308) (cal).

against the accused. Thus where the accused is a poor/old/local man who is not likely to abscond and that the investigation is almost complete would be sufficient to grant him bail.³

Where the accused under the Act, is a foreigner and is likely to flee if enlarged on bail, the order granting bail to him is liable to be set aside.⁴

When the entire evidence against the petitioner was to be adduced by the Trial Court on particular date and its effect was to be considered by that Court, then in such circumstances the petitioner would not be entitled to be released on bail as premature stage.⁵

Though the Court had not examined the twin requirements of S. 37 while granting bail to accused, the accused did not misuse his liberty, therefore, the order granting bail need not be interfered with.⁶

The statement by Trial Court, in the order, of granting bail to accused under N.D.P.S. Act that 'it cannot be said at this stage whether the accused is guilty of the offence or not' is violative of S. 37 and the bail granted and confirmed by High Court should be cancelled.⁷

When the Court was satisfied that there are reasonable grounds for believing that the petitioner is guilty of an offence under S. 20 of the Act, then the petitioner would not be entitled to be released on bail.⁸

Where the search officer entered house of accused only on authorisation of his superior officer, duly empowered and seized the contraband and same was duly intimated, there being no violation of any mandatory provisions, bail could not be granted.⁹

Where *prima facie* it appeared that accused was trying to tamper with the prosecution evidence, on that count, his bail application was liable to be dismissed.¹

Where the point whether under S. 35-A(1)(b) the Magistrate has the jurisdiction to remand the accused to custody beyond the period exceeding 15 days

3. 1994 Cri LJ (NOC) 236 : (1994) 1 Gauhati LR 295.
4. 1992 Cri LJ 2143 (2146) : (1991) 2 Crimes 785 (Mad).
5. (1992) 1 Chand LR (Cri) 596 (599)(HP).
6. (1996) 1 EFR 365 (367).
7. (1996) 1 EFR 393 (394) (SC).
8. (1992) 2 Chand LR (Cri) 546 (549) (HP) 1995 Cri LJ 875 (Bom) 1994 Cri LJ 3324 (3327) (Gau) 1994 cri LJ (NOC) 468 (Raj) 1989 Cri LJ 468 (476)(DB) : 1987 FAJ 505 (Guj).
9. (1995) 76 ELT 567 (571) (Mad).
1. (1996) 1 Rec Cri R 614 (615,616) (P & H).

was the subject-matter of decision by larger Bench, the accused was admitted to bail.²

When inspite of requisitions issued and letters sent to police stations for producing case diary the police could not sent it, then the accused would be entitled to be released on bail.³

Where accused found in possession of smack sought bail on ground of irregularity in search and non-compliance of provisions of S. 50 which grounds could be raised at stage of trial and no case was made out for grant of bail, same was rejected.⁴

Bail. Seizure of contraband article. Husband of applicant running away though he was present at time of raid. House from where seizure made found to be owned by father-in-law of applicant. Said seizure also not made at instance of applicant. Reasonable grounds being present to believe that accused was not guilty of offence. Accused-applicant entitled to be released on bail.⁵

Where the Magistrate granted bail to an accused charged under S. 21 without any material on record and the trial was exclusively triable by Court of Sessions which cancelled the bail, the cancellation was justified due to material before Sessions Court showing possession of narcotic drugs by accused.⁶

Where two youngers from same building in which alleged recovery was made were chosen as panchas and there were serious allegations that applicant has not only contacted panchas but they have also tampered with them and panchas have filed an affidavit that they were misled, Court is left with no option but to grant bail.⁷

When the petitioner lady was found in possession of 10 gms. of Charas and was in custody for about one month, then in facts and circumstances of the case the petitioner was granted bail with conditions.⁸

When the accused *prima facie* is engaged in a clandestine business of narcotic drugs at the age of 70 years, his age cannot be a ground for releasing him on bail in view of S. 37.⁹

2. (1994) 1 Chand LR (Civ & Cri) 628 (629) (P & H).

3. 1989 EFR 626 (MP).

4. 1991 UP Cri R 417 (All).

5. 1996 Cri LJ 4305 : 1996 (2) ECR 292 (MP).

6. 1990 Cri LJ 2058 (2064/2065) : (1990) 1 Bom CR 506.

7. (1994) 1 FAC 270 (270) (Bom).

8. (1992) 1 Cri LC 474 (475) (Raj).

9. (1996) 2 EFR 254 (260) : 1996 2 WLC 445 (Raj).

Where the accused was charged of possession 3 kilograms of brown sugar, he would not be entitled to be released on bail even though there was a long pre-trial detention.¹

Where the accused himself confessed that he dealt in narcotic substances in the past and a large quantity of psychotropic substance was recovered from him, the accused would not be entitled to bail u/s. 37 of the Act.²

Neither the fact that the accused was already granted interim bail nor the argument that the quantity of opium seized from the accused was not very big would not enable the accused to get the bail in view of S. 37 of the Act.³

Where the bail was granted by the special Judge at the pre-complaint/pre-chargesheet stage and the same was confirmed by the High Court, on filing of the complaint by the authorities, the successor of the special Court Judge has no jurisdiction to cancel the bail.⁴

Accused not entitled to of bail for non-impleadment of umon of India as party in bail application.⁵

Where the person accused of an offence under the Act was released on bail during investigation in the absence of sufficient material on record, he cannot be remanded to judicial custody subsequently on the cognization of an offence by cancellation of bail in view of S. 37 (b)(ii) of the Act, as the same would amount to review of the earlier order.⁶

Where the accused was raided and apprehended while he was travelling in a bus and he was found in possession of 3 kg. of brown sugar valuing 3 crores of rupees in the international market and inspite of raids conducted by investigating machinery the absconding accused could not be found, in the entitled to be released on bail for the alleged non-compliance with the provisions of Ss. 50 and 57.⁷

Where the accused was arrested by Army authority and heroin powder was recovered from his custody it cannot be said that only because there were some infraction of S. 42 and S. 50 of the Act while arrest/search/seizure etc. were made by the Army authority, the accused has to be released on bail.⁸

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1. 1994 Cri LJ (NOC) 436 : 1994 Jab LJ 706 (MP).
 2. 1994 Cri LJ 818 (824) : 1994 All LJ 246.
 3. 1989 Cri LJ 1559 (1560) : (1989) 1 FAC 158 (Delhi).
 4. 1993 Cri LJ 1550 (1557) : (1992) 3 Crimes 554 (Bom).
 5. 1996 1 Raj LW 177 (184) : (1997) 1 EFR 118.
 6. 1994 Cri LJ 660 (663)(DB) : (1994) 77 Cut LT 452 (Orissa).
 7. 1994 Cri LJ (NOC) 436 : 1994 Jab LJ 706 (MP).
 8. 1994 Cri LJ 2859 (2861) : (1994) 2 Gauhati LR 153. (1990) Cri LJ 1990 (MP) dissented from

Where bail to the accused was granted merely on the ground that he was detained for more than a month, the same is liable to be cancelled.⁹

Where the accused u/s. 18 was remanded to judicial custody beyond the period of 15 days by the judicial Magistrate, though such detention is illegal, as the challan was filed within 90 days before the Addl. Sessions Judge, the petitioner would not be entitled to bail.¹

Limitation for granting bail

Grant of bail to the applicant alleged to have committed an offence under the Act is subject to the limitations specified in S. 37(1)(b). The Court can use its discretion if there are reasonable grounds for believing that he is not guilty of such offence or that he is likely to commit any offence while on bail.²

The limitation on the power to grant bail imposed by S. 37(1)(b) is applicable only if offence is punishable for a term of imprisonment of five years or more under the Act. An offence under S. 20(b) (1) is punishable for a period which may extend to 5 years and under S. 20 (b)(ii) for a term which shall not be less than 10 years but which may extend to 20 years. Thus under S. 20 (b) (1) sentence can be less than 5 years hence bar under S. 37 (1)(b) will not operate and bail can be granted.³

While applying the provisions of S. 37, the expression, no person accused of an offence punishable with a term of imprisonment for 5 years or more, should necessarily be interpreted to mean, no person convicted of an offence and sentenced to a term of imprisonment for 5 years or more. Therefore in all such cases where the actual punishment inflicted by the Trial Court in imprisonment for a term less than 5 years, the embargo imposed under S. 37 would be inapplicable.⁴

The provisions of S. 37(1)(b) of the Act does neither impose any unreasonable condition infringing the principle of Art. 21 of the Constitution nor it is violative of provisions of Art. 14 of Constitution. The provisions of S. 37(1)(b) are also not contrary to the provisions of S. 36A of the Act.⁵

Where the alleged offences committed by petitioner were petitioner were punishable under S. 58 (2) of the N.D.P.S. Act, the maximum punishment for

9. 1992 Cri LJ 3150 (3153)(Mad).
1. 1994 Cri LJ 836 (838) : 1994 Raj Cri C 378.
2. 1995 AIHC 5598 (5600) (Him Pra) (1996) 1 Cur Cri R 81 (82) : (1996) 1 EFR 483 1995 Cri LJ 732 (734) (Mad) (1992) 1 EFR 154 (158)(Delhi) 1990 Cal Cri LR 298 (305)(DB).
3. 1994 East Cri C 303 (Pat) 1997 All Cri C 713 : 1997 UP Cri R 389 1997 Cri LR (Guj) 163 (165) 1997 Cri LJ 6 (Orissa) (1996) 11 Orissa Cr 314 (316) 1993 Cri LJ 94 (100) (Kant) 1993 Cri LJ 3342 (3362)(DB) : 1993 Mad LW (Cri) 371 (1991) 2 All Cri LR 350 (352)(Guj).
4. (1996) 10 OCR 566 (570) : (1996) 1 Orissa LR 540.
5. 1994 Cri LR (Raj) 801 (808).

Where bail to the accused was granted merely on the ground that he was detained for more than a month, the same is liable to be cancelled.⁹

Where the accused u/s. 18 was remanded to judicial custody beyond the period of 15 days by the judicial Magistrate, though such detention is illegal, as the challan was filed within 90 days before the Addl. Sessions Judge, the petitioner would not be entitled to bail.¹

Limitation for granting bail

Grant of bail to the applicant alleged to have committed an offence under the Act is subject to the limitations specified in S. 37(1)(b). The Court can use its discretion if there are reasonable grounds for believing that he is not guilty of such offence or that he is likely to commit any offence while on bail.²

The limitation on the power to grant bail imposed by S. 37(1)(b) is applicable only if offence is punishable for a term of imprisonment of five years or more under the Act. An offence under S. 20(b) (1) is punishable for a period which may extend to 5 years and under S. 20 (b)(ii) for a term which shall not be less than 10 years but which may extend to 20 years. Thus under S. 20 (b) (1) sentence can be less than 5 years hence bar under S. 37 (1)(b) will not operate and bail can be granted.³

While applying the provisions of S. 37, the expression, no person accused of an offence punishable with a term of imprisonment for 5 years or more, should necessarily be interpreted to mean, no person convicted of an offence and sentenced to a term of imprisonment for 5 years or more. Therefore in all such cases where the actual punishment inflicted by the Trial Court in imprisonment for a term less than 5 years, the embargo imposed under S. 37 would be inapplicable.⁴

The provisions of S. 37(1)(b) of the Act does neither impose any unreasonable condition infringing the principle of Art. 21 of the Constitution nor it is violative of provisions of Art. 14 of Constitution. The provisions of S. 37(1)(b) are also not contrary to the provisions of S. 36A of the Act.⁵

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 5. 1994 Cri LR (Raj) 801 (808).

which was two years imprisonment, the provisions of S. 37 could not be pressed into service, and the petitioner would be entitled to bail.⁶

The limitations on granting bail to the accused provided in S. 37(1)(b) of the Act are fully applicable for an offence punishable u/s. 20(b)(i) of the Act.⁷

The limitation on granting of bail under S. 37(1)(b) comes in only when question of granting bail arises on merits. By its very nature provision is not attracted when grant of bail is automatic on account of default in filing complaint within maximum period of custody by virtue of S. 167 (2) of Criminal P.C. thus S. 37 of the Act cannot be said to be inconsistent provision to exclude applicability of proviso to S. 167 (2), Cr.P.C. when S. 167 Cr.P.C. is made expressly applicable by S. 36-A of the Act.⁸

Limitations introduced by amendment of 1989 to S. 37 are applicable to special Courts only.⁹

The power of the High Court to grant bail to the accused under the Act is subject to the limitations u/s. 37 of the Act. Thus, merely because challan was not filed within 90 days the accused would not be automatically entitled to be released on bail.¹

Limitations so be in addition to limitations in Cri.P.C.

The power of High Court and Sessions Court to grant bail is subject to the limitations contained in the provisions of S. 37 of the N.D.P.S. Act.²

No doubt that powers of High court to grant bail are restricted in view of S. 37 of Act but at same time, if it appears that prosecution agency which is responsible for delay in conducting the trial and that has resulted intention of accused in custody for considerable period, it would be within powers of High Court to grant bail in such situation inspite of provisions of S. 37 of N.D.P.S. Act.³

Even if power of High Court under S. 389, Cr.P.C. regarding suspension of sentence is not expressly excluded by S. 37, it cannot be exercised in view of stringent provisions of S. 37 of the Act.⁴

Application of S. 167 of Cr.P.C.

When the complaint against the accused arrested for commission of an offence under the Act was not filed within the period specified in the proviso to

6. (1996) 1 WLC 133 (134) (Raj).

7. 1994 Cri LJ 671 (673) : 1993 Raj Cri.C 584.

8. 1995 AIR (SCW) 2543 (2548) : (1995) 4 SCC 190.

9. (1990) 1 EFR 153 (163) (DB) (Delhi).

1. 1994 Cri LJ 50 (54) (Raj).

2. 1994 Mad LJ (Cri) 142 (146) 1995 AIR SCW 3543 (2550) : (1995) 4 SCC 190 1995 AIHC 2908 (2910) (P & H) (1994) 1 Pat LJR 5010 (505) 1993 Cri LJ 3776 (3785) (Raj).

3. (1992) 2 Crimes 1089 (Bom).

4. (1992) 2 Crimes 1089 (1061) (Mad).

S. 167(2), Cr.P.C. then the order directing accused to be released on bail would be proper particularly in the absence of any provision in the Act excluding the applicability of proviso to S. 167(2), Cr.P.C.⁵ (Bail. Grant of. S. 37 of Act does not exclude application of proviso to S. 167(2). Failure of prosecution to file charge-sheet within prescribed time under S. 167(2). Proviso. Does not create infeasible right on accused to exercise it at any time).⁶ (Provisions of S. 37 do not override provisions of S. 167(2), Cr.P.C.).⁷ **Overruled and⁸ Diss. from.** Person sought to be prosecuted for offences under Act. Not excluded from operation of S. 167(2).¹

The breach of the provisions of S. 36-A(1)(b) if at all considered to be a breach, even then it is just like a simple breach of the procedure u/s. 67 (1)(a) of the Code wherein the Investigating agency is directed to file charge-sheet within the prescribed limit. Such procedural illegality cannot be permitted to outweigh the underlying object of provisions contained in S. 37 which has clearly taken away all the rights of the accused to have bail until and unless the conditions provided in S. 37 are complied with.² **Not good law** in view of³

Where the accused was released on bail u/s. 167 (2) of Cr.P.C. on the ground of defect of non-filing of charge-sheet within stipulated time, cancellation of such bail after curing the defect u/s. 37 of the Act would be proper.⁴

Where heroin was found in possession of accused who was granted bail under S. 167 Criminal P.C. and intelligence report suggested likelihood of accused jumping bail and another accused has jumped bail, order cancelling bail of accused was proper.⁵

Application of S. 437 of Cr.P.C.

Section 37 to the extent it is inconsistent with S. 437 of Cr.P.C. supersedes the corresponding provision in the Code and imposes limitations in addition to those under S. 437 Cr.P.C.⁶

5. 1995 AIR (SCW) 2550 : (1995) 4 SCC 190. (1993) Cri LJ 1443 (MP) (FB) : 1993 Cri LJ 442 (FB) (Orissa) : (1995) 1 EFR 294 (All) : 1995 Cri LJ 584 (MP); 1994 Cri LJ 3318 (Mad); (1994) 3 Crimes 1007 (Mad); 1994 Cri LJ 3366 (P & H); 1991 Cri LJ 1537 (Bom) and (1989) 3 Bom CR 228. AIR 1996 SC 2897 : 1996 Cri LJ 1652 : 1996 AIR (SCW) 734.
6. (1992) Cri LC 620 (627) (FB) (Ker), (1992) 2 EFR 369 (377) (FB) (Kar). 1996 Cri LJ 1185 (1191) (FB) (P & H).
7. (1995) 4 SCC 190. (1993) Cri LJ 1443 (MP) (Fb0); 1993 cri LJ 442(FB) (Orissa); (1995) 1 EFR 294 (Al.); 1995 Cri LJ 584 (MP); 1994 Cri LJ 3318 (Mad); (1994) 3 Crimes 1007 (Mad); 1994 Cri LJ 3366 (P & H); 1991 Cri LJ 1537 (Bom) and (1989) 3 Bom CR 228.
8. 1993 Cri LJ 1443 (M); 1994 Cri LJ 2131 (Gau). dis-from.
1. 1996 Cri LJ 1289 (1290) (P & H) (1996) 1 Chand LR (Civ & Cri) 622 (629) : (1996) 1 Rec Cri R 578 (P & H) (1996) 2 EFR 254 (259) : (1996) 2 WLC 445 (Raj) (1996) 1 Crimes 181 (182) : (1996) 1 East Cri C 576 (1996) 1 Cur Cri R 547 (549) (1995) 1 Crimes 314 (331) (DB) (Mad) 1995 Cri LJ 2532 (2533) (P & H) (1994) 2 EFR (371) (All) (1992) 2 Chand Cri C 290 (292) (Delhi) 1992 LJ 352 (353)(Orissa) (1991) 1 Orissa LR 549 (50).
2. 1995 Cri LJ 3160 (3161, 3162) (P & H). (1994) (1) CCR 336; 1992 (2) Crimes 353 (FB) (Ker).
3. 1991 (1) Recent CR 338.
4. 1992 Cri LJ 352 (354)(Orissa).
5. (1996) 2 Rec Cri R 7 (8) : 1996 2 All Cri LR 716.
6. 1995 AIR (SCW) 2543 : (1995) 4 SCC 196 1995 IAHC 2908 (2910)(P & H) 1994 (1) Rec Cri R 731 (733) (P & H).

The first proviso to S. 437 (1) Cr.P.C. cannot override the provisions of S. 37(1)(b) of the Act. Therefore simply because a person arrested under Ss. 8/18 is a woman or a sick or infirm he/she will not be entitled to bail unless and until the conditions mentioned in S. 37 (1)(b) of the Act are fulfilled.⁸

Sessions Judge has jurisdiction to consider a bail matter of an accused involved in an offence under S. 20(b)(i) or even other more serious offences under the N.D.P.S. Act.⁹

Noticing the difference in phraseology used in S. 437 of Cr.P.C. and S. 37 of the N.D.P.S. Act the burden of proof in respect of bail is ultimately not on the prosecution to show that there is *prima facie* case against the accused but it is on the accused to show that *prima facie* he is not guilty.¹

Powers of High Court to grant bail under S. 439 of Cri.P.C. for offence of this Act

The High court's power u/s. 439, Cr.P.C. to grant bail to an accused under the Act is subject to the limitation u/s. 37 of the Act.²

The limitations placed by S. 37 of the Act are applicable to Special Courts only and not to the power of High Court acting under S. 439, Cr.P.C.³

High Court does not have power to release the accused on bail during pendency of appeal.⁴

Powers of High Court under S. 439, Cr.P.C. are not curtailed in any manner except that they are to be exercised with embargo an conditions as laid down by S. 37 of the Act.⁵

Where in spite of directions of High Court there was no progress in the case before Trial Court on day to day basis, then the accused could be granted bail by High Court.⁶

Delayed trial, 'per se' would not be a ground to entitle the accused to bail. Further the High Court cannot relax the conditions u/s. 37 of the Act.⁷

8. 1994 Cri LR (Raj) 810 (808).

9. (1996) 10 OCR 638 (639) : 1996 1 Orissa LR 568.

1. (1990) 1 EFR 408 (411) : 1990 Jab LJ 193 (MP).

2. AIR 1991 SC 558 : 1991 Cri LJ 654 (657) : AIR 1991 (SCW) 339 1997 UP Cri R 294 (296) (AL) 1996 Cri LJ 805 (Bom) 1996 Cri LJ 3086 (3091) (Raj) (1994) 1 Cri LR (MP) 114 (116) 1994 Mad LJ (Cri) 65 (71) 1994 (3) Rec Cri R 198 (204) (P & H) 1993 Cri LJ 1550 (1554) (1992) 3 Crimes 554 (Bom) 1993 Cri LJ 2567 (2569) P & H (1992) 1 Orissa LR 421 (434) (DB) 1991 Cal Cri LR 264 (273) (DB) (1991) 71 Cut LT 312 (314).

3. 1990 Cri LJ (NOC) 105 : (1989) 30 Delhi LT 392 1992 Cri LJ 561 (562) (Kant) (1992) 1 EFR 547 (555) (DB) (Mad) (1991) 2 EFR 440 (443) (Bom) 1990 Cri LJ 2001 (2208) : (1990) 1 Bom CR 457 (1989) 2 All Cri LR 833 (846) (DB) (Delhi).

4. (1995) 2 Rec Cri R 129 (133) (P & H) 1994 Mad LW (Cri 549 (552) (1992) 2 Crimes 1058 (1061) (Mad).

5. (1992) 2 All Cri LR 320 (324) (P & H).

6. 1987 Cri LR (Raj) 429 (430).

7. 1992 Cri LJ 1703 (1709) : (1991) 2 Rec Cri R 614 (Delhi).