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Innocent Behind Bars: Faulty Investigations and Judicial Reluctance in Bail Decisions Under the NDPS Act

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The Narcotic Drug and Psychotropic Substances Act was introduced to address the critical problem of medicine trafficking and dependence with one of the strictest legal frameworks in India. Yet, its stringent bail provisions and recurring flaws in investigation have resulted in a troubling reality: innocent individuals often remain imprisoned for years before trial. The law places an unusually heavy burden on the accused, requiring proof of near-certainty of innocence before release, thereby weakening the principle that one is presumed innocent until proven guilty. At the same time, investigative shortcomings such as improper searches, careless evidence handling, absence of independent witnesses, and delays in forensic testing frequently undermine the credibility of prosecutions. Despite these lapses, courts often deny bail by citing the seriousness of the offence, leading to prolonged confinement, prison overcrowding, and severe personal and social consequences. This paper critically examines these challenges, drawing on judicial decisions and case studies, and proposes reforms including stronger accountability for investigators, a more balanced approach to bail, fast-track courts, robust legal aid, and uniform procedural standards. It argues that while curbing the drug menace is essential, it cannot come at the cost of fairness, liberty, and constitutional justice.

Keywords: *ndps, bail, incarceration, rights, accused, safeguards.*

INTRODUCTION

The subject of Innocent behind bars extends beyond academic discussion, catalysing legal reform. To combat the severe threat of drug trafficking and substance addiction, India established one of its strictest regulatory frameworks, the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act). Although the Act rightfully places a strong emphasis on punishment and deterrence, its strict bail requirements have raised serious questions about justice and fairness. Section 37¹ sets an extraordinarily high bar for bail, requiring judges to be convinced that the accused is not guilty and unlikely to commit new crimes. In effect, this transfers the burden firmly onto the accused, undermining the notion of the presumption of innocence. Thus, in the context of NDPS cases, the idea of an innocent behind bars strikes a powerful chord.

Long-term detention of inmates awaiting trial, which frequently results from investigative errors, reveals structural flaws that jeopardise both individual freedom and the legitimacy of the legal system. Courts have consistently identified flawed investigations, including failure to comply with statutory protections under Sections 42, 50, and 52A. In addition to undermining the credibility of the evidence, improper sampling, a lack of independent witnesses, and delays in sending illegal items to forensic labs raise questions about the integrity of the prosecution. Nevertheless, bail requests are frequently denied on the grounds of the gravity of the offence or the statutory presumption of guilt in spite of these errors.

Such judicial hesitancy can have disastrous results. Before being ultimately acquitted, innocent people may endure years of pre-trial confinement, causing them to suffer irreversible harm such as psychological trauma, social shame, and lost careers. In Indian prisons, where a sizable percentage of offenders are awaiting trial, this practice exacerbates overcrowding. Furthermore, the judiciary's mindless acceptance of faulty investigations undermines public confidence in the legal system, as demonstrated by seminal cases. Additionally, the article will examine specific case studies that exemplify these challenges, scrutinise the legal framework governing bail decisions under the NDPS Act, and investigate the intersection of investigative errors and judicial reluctance to grant bail to innocent

¹ Narcotic Drugs and Psychotropic Substances Act 1985, s 37

individuals. The study aims to propose legal system reforms to ensure justice is delivered without infringing on investigative rights.²

THE GROUND REALITY: FAULTY INVESTIGATIONS AND JUDICIAL RELUCTANCE

Faulty Investigations and Non-Compliance with Procedural Safeguards: To safeguard individual rights and maintain the integrity of justice during the critical stages of search, seizure, and investigation. Act 61 of 1985 mandates the implementation of robust procedural safeguards alongside its stringent legislative framework. These safeguards are designed not only to prevent the overextension or misuse of power by law enforcement bodies but also towards maintaining the integrity of the criminal justice system by ensuring transparency, accountability, and fairness in the handling of narcotic-related offences. However, despite the presence of these legal provisions, there continues to be a disturbing pattern of procedural lapses and non-compliance with statutory requirements by investigating authorities. A significant number of cases reveal a blatant disregard for the mandatory protocols laid down under the Act, including improper documentation, non-compliance with Section 50 requirements (About the mandatory presence of a judicial or gazetted authority during search operations), and failure to follow Section 52A guidelines on inventory, seizure, and certification of narcotic substances.

This systematic negligence often leads to flawed investigations, thereby undermining the evidentiary value of recovered contraband and raising serious concerns about the legitimacy of the prosecution. As a result, many accused individuals are subjected to prolonged pre-trial detention and face the stigma of criminality without a fair opportunity to defend themselves, thus contributing to a larger issue of miscarriage of justice. The repeated neglect in following legally established safeguards not only violates the spectrum of protections granted to defendants within the justice system but also erodes public trust in law enforcement and judicial institutions. Therefore, it becomes imperative to strengthen the implementation and monitoring mechanisms of procedural compliance under the NDPS Act to ensure justice is both done and seen to be done.³

² Ayushi R Saxena, 'The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh' (2019) 24(5) *The International Journal of Human Rights* <<https://doi.org/10.1080/13642987.2019.1663341>> accessed 30 July 2025

³ *Ibid*

Sections 42 and 50 establish obligatory procedures, including informing the accused of their entitlement to undergo a search in the presence of a magistrate or official listed in the government gazette, and documenting and communicating information before searching.⁴ Nonetheless, numerous court rulings demonstrate pervasive disregard for these protections. For example, the Hon'ble Highest Court, in a decision of 1994⁵, held that noncompliance with these laws taints the prosecution's case and renders the recovery dubious. Nevertheless, in many modern cases, both courts and investigating organisations frequently ignore such procedural flaws.

The accused was found not guilty in a recent judgment by the Himachal Pradesh High Court.⁶ In 2024, they failed to follow statutory sampling and sealing procedures. The ruling emphasises how crucial it is to uphold procedural purity, particularly in cases when the prosecution's case primarily depends on tangible evidence. The Court (Justice Rakesh Kainthla, HP High Court) underlined that the act of drawing samples from seized narcotics on the spot, in the absence of a Magistrate, is contrary to the law, casting serious doubts on the integrity of the prosecution's case.⁷

Sections 52, 52A, and 57,⁸ the rules that govern appropriate recording and the prompt transmission of seizure reports, are the subject of another pervasive infraction. The evidential value of confiscated substances is frequently compromised by delays in delivering samples to Forensic Science Laboratories (FSL). In a recent decision, the Rajasthan High Court⁹ found the accused guilty by casting severe doubt on the delay in submitting samples to FSL, which raised the risk of tampering and damaged the prosecution's case credibility.

The lack of independent witnesses during seizure operations, despite courts' constant emphasis on their significance, is perhaps more concerning. The conviction of three men under the NDPS Act was overturned by the Supreme Court in a 2024 ruling.¹⁰ (Conviction Illegal, Suffers Highest Degree of Perversity), which found that the investigation was rife

⁴ The Narcotic Drugs and Psychotropic Substances Act 1985, ss 42 and 50

⁵ *State of Punjab v Balbir Singh* (1994) SCC (3) 299

⁶ *Sachin Sharma v State of Himachal Pradesh* (2025) SSC OnLine HP 2313

⁷ Deepak Kumar, 'Failure to Follow Sampling Procedure: Himachal Pradesh High Court Acquits Accused in NDPS Case' *Lawyer e-News* (16 September 2024) <https://lawyerenews.com/legal_detail/failure-to-follow-sampling-procedure-himachal-pradesh-high-court-acquits-accused-in-ndps-case> accessed 05 July 2025

⁸ The Narcotic Drugs and Psychotropic Substances Act 1985, ss 52, 52A and 57

⁹ *Premchand v State of Rajasthan* (2024) RJ-JD 42460

¹⁰ *Mohammed Khalid v State of Telangana* (2024) INSC 158

with procedural errors and suspected fabrication of evidence. The trial court's strategy was harshly chastised by the Court, which noted that justice had become a casualty as a result of the prosecution's deceptive tactics and the judiciary's blind acceptance of faulty evidence. The fundamental flaws in NDPS investigations, which usually rely on non-compliant, opaque, and potentially manipulated procedures, are shown by these judicial observations. The result of these oversights is the incarceration of many people who are detained for long periods of time, even though they have no real criminal responsibility.

The lack of strict judicial scrutiny, especially during the bail stage, makes the accused even more vulnerable; many are eventually found not guilty after years of incarceration. This prolonged and false incarceration is another reason for overcrowding of jails in India, and not only erodes public trust in the justice system but also inflicts lasting damage on the individual and their family. The social stigma, psychological trauma, and financial burden are immense and often irreversible. Moreover, such miscarriages of justice heighten the risk of pushing innocent individuals toward alienation and, in some cases, into a life of crime. The very system meant to deliver justice, thus, ends up breeding habitual offenders, turning victims of flawed processes into potential threats to society.¹¹

JUDICIAL RELUCTANCE AND THE STRINGENT BAIL REGIME UNDER THE NDPS

A very high bar is set for the granting of bail in situations involving commercial quantities of narcotic substances by the NDPS Act, specifically Section 37. According to this clause, the court must conclude that further criminal conduct by the accused is improbable throughout the provisional release period and is, therefore, *prima facie* not guilty. As a result, bail hearings have become *de facto* trials, resulting in a gross distortion of the bail jurisprudence in practice.¹² Even in cases where the investigative method is obviously defective, courts frequently take an unduly cautious approach and mostly rely on the prosecution's argument. The burden imposed by Section 54.¹³ This presumption of guilt upon possession makes the accused's case even more difficult and goes against the fundamental presumption of innocence that forms the basis of Indian criminal law.

¹¹ Saxena (n 2)

¹² Jaytilak Guha Roy and Yatish Mishra, 'Jail not Bail or Bail not Jail?' ---Issues in Judicial Ethics' (1995) 41(3) Indian Journal of Public Administration <<https://doi.org/10.1177/0019556119950332>> accessed 23 July 2025

¹³ The Narcotic Drugs and Psychotropic Substance Act 1985, s 54

Many bail rejections, where the courts avoid violating statutory safeguards, demonstrate the judiciary's reluctance to properly analyse procedural lapses. For instance, the bail decision-making process in the majority of cases in India does not sufficiently account for the unjustifiable delay in FSL reporting in the Rajasthan High Court case.¹⁴ Or the lack of credible sampling in the Himachal Pradesh High Court case.¹⁵ The highest court stated in the Supreme Court case mentioned above that the trial court had not only failed to see basic errors in the prosecution's evidence, but had also taken a 'mechanical and blindfolded approach' in agreeing with the state's version. A strong reminder of the perils of judicial inertia is provided by the ruling, particularly when procedural irregularities are permitted to continue unchecked.¹⁶

Due to these judicial trends, even in situations where the prosecution's case is weak on its face, bail becomes the exception rather than the rule. Without linking this severity to concrete evidence or procedural integrity, courts commonly use the gravity of the offence to reject bail. As a consequence, an unbelievably high number of undertrials are lingering in prison, waiting for justice that comes too late.

SUGGESTED REFORMS

To amend the systemic confinement of justice arising from defective examinations and judicial severity in granting bail under the NDPS Act, comprehensive legal reform is essential. The following strategies address procedural fairness, judicial interpretation, legislative reforms, and infrastructural support –

Implement Procedural Safeguards with Accountability: The Delhi High Court's recent bail decision.¹⁷ Highlights the importance of adhering to procedural norms. In this decision to grant bail in an NDPS case, the Court criticised: Procedural flaws (lack of independent evidence, inconsistencies in allegations), Unjustified delays in trial proceedings and the breach of Article 21 due to prolonged detention without trial. Courts should automatically

¹⁴ *Dheeraj Singh Parmar v State of Rajasthan* (2025) SCC OnLine Raj 440

¹⁵ Kumar (n 7)

¹⁶ *Mohammed Khalid & Anr v State of Telangana* (2024) INSC 158

¹⁷ 'Delhi High Court Sets New Precedent on Bail in NDPS Cases: Emphasizes Strict Adherence to Sampling Procedures and Timely Trial Proceedings' (*Case Mine*, 06 February 2024)

<<https://www.casemine.com/commentary/in/delhi-high-court-sets-new-precedent-on-bail-in-ndps-cases%3A-emphasizes-strict-adherence-to-sampling-procedures-and-timely-trial-proceedings/view>>
accessed 05 July 2025

dismiss evidence obtained in violation of mandated compliance clauses (41, 50 & 52A) under the Act number 61 of 1985. Police officers who disregard these legal mandates should face departmental or judicial reprimands, reinforcing the constitutional guarantee of a fair trial under Article 21.¹⁸

Preserve Individual Liberty Through Judicial Interpretation: The Delhi ruling.¹⁹ Emphasised that individual liberty should not be sacrificed to procedural strictness, especially under Section 37 of the NDPS Act. Courts should adopt a pro-liberty interpretation, applying the not guilty and reasonable grounds tests with empathy, particularly in cases with procedural deficiencies or lacking independent evidence.²⁰ In this recent landmark case, 2024²¹, the Court granted bail based on:

- a. Violations under Section 52A, and
- b. Excessive trial detention, which infringes Article 21.

Fast-Track Courts & Legal Aid Infrastructure: A key concern in the Delhi ruling was the extended detention without trial in progress, violating Article 21. Reflecting on *Hussanaira Khatoon v State of Bihar*²² and the Delhi case, we must establish:

Fast-track Courts for NDPS Cases: The creation of fast-track courts dedicated to drug-related offences is one of the most important reforms required to solve the chronic delays in NDPS proceedings. Long-term imprisonment of under-trial prisoners without trial progress is a breach of Article 21 of the Constitution, which protects the right to personal liberty, as the Delhi High Court has ruled. Fast-track courts would reduce the backlog and the amount of time innocent people spend in pre-trial custody by streamlining procedures and guaranteeing that matters under the NDPS Act are handled quickly. These specialised courts have to have committed judges who are knowledgeable about the subtleties of drug legislation, guaranteeing that cases are decided quickly without sacrificing the process's fairness.

¹⁸ Constitution of India 1950, art 21

¹⁹ Kumar (n 6)

²⁰ Federico Picinali, 'Two Meanings of Reasonableness: Dispelling the 'Floating' Reasonable Doubt' (2013) 76(5) *The Modern Law Review* <<https://doi.org/10.1111/1468-2230.12038>> accessed 23 July 2025

²¹ *Gurpreet Singh v State of NCT of Delhi* (2024) SCC OnLine Del 5522

²² *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* (1980) 1 SCC 108

State-funded quality Legal Aid, with a special focus on Marginalised Groups facing Procedural Injustice: It is crucial in conjunction with the establishment of fast-track courts to provide equitable access to justice for underprivileged people who do not have the funds to retain an experienced attorney. Poor defendants' inability to pay for private legal representation frequently makes the problem of under-trial detention worse, leaving them open to procedural negligence and delayed justice. The state's provision of free legal aid to the accused can help level the playing field. In order to prevent people facing significant accusations under the NDPS Act from being left to handle the intricacies of the judicial system alone, legal assistance programs ought to be well-funded and easily available. Furthermore, the legal aid system needs to be all-inclusive, providing prompt support from qualified public defenders who may contest faulty investigations and protect the rights of the accused.

Mandatory Guidelines for Police Consistency in Search, Seizure & Investigation: One of the most pressing reforms is the establishment of strict and uniform guidelines for police officers, particularly in search, seizure, sampling, and record-keeping under the NDPS Act. Despite the Act's procedural mandates, there is significant inconsistency in enforcement across jurisdictions. A centralised directive, crafted by the Ministry of Home Affairs, or through a model law of NDPS investigation approved by the judiciary, must clearly instruct officers on: Immediate documentation of seizure under Section 42, Presence of independent witnesses during searches (as per Section 50), Uniform procedures for packaging and sending samples to Forensic Science Laboratories as per the provisions of Section 52A.

Non-compliance should result in automatic disciplinary action and exclusion of such evidence from the trial. These measures are crucial to reducing unlawful detention and enhancing the integrity of prosecutions. Furthermore, mandatory training programs must be introduced to familiarise investigation officers with the nuances of the Act, ensuring procedural sanctity is not compromised due to ignorance or haste.

The introduction of a digital monitoring mechanism, such as real-time uploading of panchamas, seizure memos, and FSL receipts, could act as a powerful deterrent against procedural manipulation. Regular audits by independent oversight bodies may also bring accountability and uniformity to the implementation of NDPS procedures. By embedding

these systemic checks, the justice system can strike a fair balance between crime control and constitutional rights, thereby restoring public faith in narcotics-related law enforcement.

CONCLUSION

Despite being passed with the admirable goal of combating the drug problem, the NDPS Act has become one of India's most contentious criminal laws because of its strict bail requirements and recurrent investigation shortcomings. The analysis in this paper shows that the issue is not just with the severity of the law, but also with how it interacts with judicial conservatism and institutional inefficiencies. These factors have combined to produce a cycle where innocent people are much too frequently sentenced to lengthy jail terms. Repeated disregard for statutory protections at the investigative stage goes right to the heart of justice. Sections 42 and 50, which were designed to safeguard individual rights and prevent abuse of power, are frequently broken.

Unreliable evidence results from investigating agencies' disregard for required search, seizure, and sampling protocols. However, courts usually ignore such errors, normalising procedural indiscipline, rather than viewing them as fatal to the prosecution's case. The precise protections that Parliament incorporated into the NDPS Act are essentially weakened by the judiciary's unwillingness to demand rigorous obedience. Hearings have become mini-trials due to the limited interpretation of Section 37 at the bail stage.

The criminal law presumption of innocence is violated by courts' unworkable requirement that the accused have a near-certainty of innocence before granting bail. The tendency to prioritise the graveness of offence over particular freedom is making bail the exception rather than the rule. Courts frequently accept prosecutors' claims even when there are clear errors in the investigation, which feeds the cycle of unwarranted detention. This combined failure of poor inquiry and judicial inertia has far-reaching effects. After lengthy trials, innocent people are exonerated after spending years in prison. It is impossible to reverse the ensuing stigma, financial devastation, and psychological harm. Families are split up, and people's faith in the legal system is damaged. Even worse, long-term confinement can alienate people to the point that they turn to crime, thus turning victims of ineffective procedures into criminals. Therefore, reform is essential. The most important thing is to use procedural precautions appropriately. Investigating officers should be subject to departmental sanctions

and automatic exclusion of evidence for noncompliance. Second, there needs to be a change in court interpretation in favour of liberty. Courts ought to acknowledge that refusing bail in the face of investigative shortcomings is against Article 21. Third, lowering under-trial detention requires institutional changes like accelerated NDPS courts and improved legal aid facilities. Lastly, to avoid inconsistencies and guarantee uniformity, uniform national norms for search, seizure, and forensic processes must be created and closely observed.

In the end, fundamental rights cannot be sacrificed in the fight against drugs. A legal system runs the risk of losing credibility if it puts conviction ahead of equity. The law's actual power comes from its capacity to strike a balance between deterrent and constitutional protections, not from how punitive it is. India can progress toward a more compassionate, credible, and successful drug control system, one that guarantees that the innocent are no longer sentenced to suffer in prison, by resolving investigative shortcomings and judicial resistance.