



Ayana Legal

THE BUZZ

Monthly Newsletter By Team Ayana Legal

Landmark Judgements

Babu Singh v. State of Uttar Pradesh, (1978) 1 SCC 579

“The issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitive judicial process.”

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21

“The matters to be considered in an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;

Right to Bail

The Supreme Court has categorically held on various occasions that the right to apply for bail is an individual right which is implicit in Articles 14, 19 and 21 of the Constitution.

In the landmark judgement of State of Rajasthan v. Balchand alias Baliya, (1977) 4 SCC 308 the Apex court held that granting bail was a basic rule and jail was an exception.

Legal Affairs v. Amiya Kumar Roy Chowdary, ILR (1974) 1 Cal 304 the Court held that “the law of bails, has to dovetail two conflicting demands, namely, on one hand, the requirements of society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz., the presumption of innocence of an accused till he is found guilty.”

Bail laws are very subjective. In this edition, we cast a bird’s eye view of bail under the NDPS Act.

The NDPS Act

Popularly referred to as the NDPS Act, the Narcotics Drugs and Psychotropic Substances Act was enacted to consolidate the laws relating to narcotic drugs and to make “stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances.”

The NDPS Act under Section 8 prohibits the cultivation,

- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail."

Thank You

In these unpredictable times, we hope that you are taking care of yourself. Team Ayana Legal thanks you for the trust. Till we are back with our next edition, stay safe and keep smiling.

Disclaimer

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production, manufacturing, sale, possession, purchase, transport, consumption of any narcotic or psychotropic substance.

The punishment imposed for contravention of the provisions of the Act depends on the quantity of the substances found.

Bail for Offences Committed

Section 37 of the NDPS Act states that "every offence punishable under this Act shall be cognizable" and non-bailable.

The section provides certain procedures to be followed of bail is to be granted:

- a. "The public prosecutor has been given an opportunity to oppose the application for release"
- b. "The court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

Section 35 of the Act describes the presumption of culpable mental state. It states that unless proved otherwise the court will assume the accused had the "mental state", intention and motive, to commit an offence under this Act. Hence, it is necessary for such accused to prove that they did not have a "culpable mental state" in order to secure bail.

The Supreme Court in *State of Kerala v. Rajesh*, (2020) 12 SCC 122, held that liberal approach for granting bail for offences under the NDPS Act cannot be followed. It is essential that the twin conditions enumerated under Section 37 be met. Unless such conditions are met bail cannot be granted. It was further expressed that "reasonable grounds" under Section 37 be something more than prima facie grounds.