

2025 LiveLaw (SC) 1109

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
MANMOHAN; J., N.V. ANJARIA; J.**

SLP (Crl) No.9792/2025; NOVEMBER 7, 2025

UNION OF INDIA *versus* NAMDEO ASHRUBA NAKADE

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) - Section 37 - Mandatory Conditions for Bail - Release on bail for offences involving commercial quantity is the exception, and negation of bail is the rule – Held, the provisions of the NDPS Act must be interpreted literally and not liberally to prevent frustrating the object, purpose, and preamble of the Act - The issue of long incarceration or delay in trial (accused in custody for 1 year and 4 months and charges not framed) does not dispense with the mandatory requirement of Section 37 in a case involving a commercial quantity and *prima facie* evidence of organized drug trafficking - Since the accused was charged with offenses punishable with ten to twenty years rigorous imprisonment, it could not be said that the Respondent has been incarcerated for an unreasonably long time - An undertaking given by the accused's brother (a Sepoy in the Indian Army) to ensure compliance with bail conditions is of no relevance because the brother cannot be imprisoned if the accused absconds - Despite long custody and delayed framing of charges, the allegations are serious, as the recovery was much in excess of the commercial quantity and the accused allegedly got cavities ingeniously fabricated below the trailer to conceal the contraband - **Appeal allowed. [*Relied on Narcotics Control Bureau vs. Kashif (2024 SCC OnLine SC 3848; Paras 11-15)*]**

[Arising out of impugned final judgment and order dated 11-03-2025 in CRP No. 727/2025 passed by the High Court of Andhra Pradesh at Amravati]

For Petitioner(s): Mr. S D Sanjay, A.S.G. Mr. Gurmeet Singh Makker, AOR Mr. Rajat Nair, Adv. Ms. Mili Baxi, Adv. Mr. Akshay Amritanshu, Adv. Mr. Nisarg Choudhary, Adv. Mr. Pallav Mongia, Adv. Mr. Gurmeet Singh Makker, AOR

For Respondent(s): Mr. Dilip Annasaheb Taur, AOR

ORDER

1. Leave granted.
2. The appeal has been filed challenging the judgment dated 11.03.2025 passed by the High Court of Andhra Pradesh at Amaravati in Criminal Petition No.727 of 2025 whereby the High Court granted bail to the Respondent in S.C. No.144 of 2024 for offences under Section 8(c) read with Sections 20, 28 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).
3. The High Court while granting bail has held that investigative needs are over as the chargesheet stands filed on 03.05.2024. It has further held that the trial before the special Court is unlikely to take place in the immediate future and the Respondent's continuous availability for smooth conduct of trial has been assured by his elder brother who is a Sepoy in the Indian Army.
4. The relevant facts of the case are that 731.075 kilograms of ganja valued at 2.91 Crore (which ₹ constitutes commercial quantity under the NDPS Act) was recovered from a lorry which was being driven by the Respondent and also owned by the Respondent.
5. Learned Additional Solicitor General for the State submits that the High Court has not provided justification for waiver of mandatory condition under Section 37 of the NDPS

Act. In support of his submission, he relies upon a judgment of this Court in *Narcotics Control Bureau vs. Kashif* 2024 SCC OnLine SC 3848 wherein this Court has held as under:

“8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act...

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39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under NDPS Act...”

6. Learned Additional Solicitor General contends that in view of the sections of NDPS Act attracted to the present case, the Respondent-accused is liable to be sentenced to a minimum term of ten years with the maximum term being twenty years.

7. *Per contra*, learned counsel for the Respondent-accused states that the Respondent-accused has been granted bail after being in custody for nearly two years. He further contends that since the High Court was of the view that it would take a long time for the trial to conclude, the Respondent-accused was granted bail. In support of his submission, he has relied upon the following observations made in the impugned order:

“8. The further submission of the learned counsel for petitioner/accused is that respondent/DRI need not hold apprehensions of accused absconding in this case and placed on record, the sworn affidavit of elder brother of this petitioner. The affidavit is sworn by Sri Mhatardeo Ashruba Nakade. On 06.03.2025 during the hearing of this bail petition, the said individual appeared online and affirmed that he had given the undertaking affidavit on 01.01.2025. He further stated that he is a sepoy working in Indian Army. A copy of his service certificate, his Aadhar copy and copy of his identity card are placed on record. The submission of the elder brother of the petitioner and contents of the affidavit are to the effect that the elder brother states that he has full control over his brother/accused and he is capable of producing him before the court concerned as and when directed and prays for release of the accused on bail.

9. *The further submission of the learned counsel for petitioner/accused is that the petitioner may also be directed, in the event of granting bail, to make available his location through mobile phone by pairing it with the mobile phone of the investigating officer round the clock. In this regard, learned counsel for the petitioner cited Puranmal Jat. V. State of Rajasthan to the effect that such order could be passed.*

10. Having considered the rival submissions, the following aspects are to be stated:

Section 37 of the NDPS Act reads as below:

Offences to be cognizable and nonbailable.--(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), --

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 1[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, 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.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

The above provision refers to section 19 which provides punishment for embezzlement of opium by cultivator; section 24 provides punishment for external dealings in Narcotic Drugs and Psychotropic Substances where the transactions take place with persons outside India; Section 27A provides for punishment for financing, illicit traffic and harbouring offenders. It is evident from the record that the present case does not fall under any of the above categories of offences. The notification of the Central Government indicates that Ganja in a quantity more than 20 Kgs is commercial quantity. In the present case, commercial quantity of Ganja is involved.

11. Crime was detected on 07.11.2023. Investigation was over on 03.05.2024. On 06.03.2025 as well as today, even charges were not framed by the trial court. Thus, the petitioner/accused has been in judicial custody for the last one year four months i.e. from 07.11.2023. He being an under trial prisoner, it is always expected that trial court would show expedition in taking up trial of such cases. Even after ten months after filing of the charge sheet, the trial court could not take up the case for hearing on charges. Looking at the pace of disposals as presented by the learned counsel for the petitioner, it is quite unlikely that the trial court would be in a position to take up this case in the near future."

8. This Court is of the view that the issue of substance abuse has emerged as a global public health crisis in the twenty-first century, affecting every country worldwide, as drug trafficking and addiction have become pervasive. The United Nations Office on Drugs and Crime (UNODC) reported in its 2025 World Drug Report that "As at 2023, some 316 million people

worldwide had used drugs in the past year, representing an increase over the past decade that outpaces population growth, which indicates a higher prevalence of drug use."

9. In India, there has been a concerning increase in drug abuse among the youth. Substance abuse not only affects individuals, families, and communities but also undermines various aspects of health including physical, social, political, cultural foundations, and mental well-being. (See: "*Bhattacharya S, Menon GS, Garg S, Grover A, Saleem SM, Kushwaha P. The lingering menace of drug abuse among the Indian youth – it's time for action. Indian J Community Med 2025;50:S9-12, published on 17th April, 2025*")

10. According to many news reports, India faces a clear dilemma between tackling the narcotics crisis systematically or sacrificing its most valuable resource i.e. its young people. The extent of menace of drug abuse has also been highlighted by this Court in the case of *Ankush Vipin Kapoor v. National Investigation Agency*, (2025) 5 SCC 155 wherein this Court has observed as under:

"9.1 The ills of drug abuse seem to be shadowing the length and breadth of our country with the Central and every State Government fighting against the menace of substance abuse. The debilitating impact of drug trade and drug abuse is an immediate and serious concern for India.

As the globe grapples with the menace of escalating Substance Use Disorders (“SUD”) and an ever accessible drug market, the consequences leave a generational Page 75 of 84 imprint on public health and even national security. Article 47 of the Constitution makes it a duty of the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The State has a responsibility to address the root causes of this predicament and develop effective intervention strategies to ensure that India’s younger population, which is particularly vulnerable to substance abuse, is protected and saved from such menace. This is particularly because substance abuse is linked to social problems and can contribute to child maltreatment, spousal violence, and even property crime in a family.”

11. In the present case, this Court finds that though the Respondent-accused was in custody for one year four months and charges have not been framed, yet the allegations are serious inasmuch as not only is the recovery much in excess of the commercial quantity but the Respondent-accused allegedly got the cavities ingeniously fabricated below the trailer to conceal the contraband.

12. *Prima facie* this Court is of the opinion that the Respondent-accused is involved in drug trafficking in an organized manner. Consequently, no case for dispensing with mandatory requirement of Section 37 of the NDPS Act is made out in the present matter.

13. Moreover, this Court is of the view that as the accused has been charged with offences punishable with ten to twenty years rigorous imprisonment, it cannot be said that the Respondent has been incarcerated for an unreasonably long time.

14. Further, Respondent-accused’s contention that his brother who is a Sepoy in the Indian army has given an undertaking to ensure Respondent-accused’s compliance with the bail conditions is of no relevance because if the Respondent were to abscond, his brother cannot be sent to prison. In India, the alleged sins of an accused cannot be visited on his brother or other family members.

15. Accordingly, the present criminal appeal is allowed and the impugned order dated 11.03.2025 passed by the High Court of Andhra Pradesh at Amaravati in Criminal Petition No.727 of 2025 is set aside. The Respondent-accused is directed to surrender within a period of two weeks.

16. Pending application(s), if any, shall also stand disposed of.