

## BAIL AND RIGHTS DURING TRIAL UNDER GENERAL AND SPECIAL LAWS

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### ABSTRACT

This chapter examines the rights of the accused in India with a focus on bail and trial protections under general and special laws. It highlights key constitutional guarantees such as the presumption of innocence, right to counsel, and protection against self-incrimination. Special laws like the POCSO Act and NDPS Act, however, impose stricter bail norms and reverse the burden of proof, often leading to prolonged pre-trial detention. Through analysis of statutory provisions and judicial interpretations, the chapter underscores the tension between safeguarding public interest and upholding individual liberty, emphasizing the need for balanced, rights-based legal processes

#### 1. Introduction

Among the laws that are a part of the of the legal system that protects the rights of the accused in India are the Indian Constitution, the BNSS, BSA, and BNS. In addition, several special laws, such as the POCSO Act, the NDPS Act, and the UAPA, impose stricter procedural rules, particularly in relation to bail and detention.

The foundation of these legal concepts is the assurance of an unbiased trial and the protection of the rights. The Indian legal system upholds the principle that presumes an arrested person to be innocent, which ensures that a person cannot be considered guilty until proven so. Numerous judicial decisions have upheld this concept, which is outlined in Article 21 of the Constitution, which safeguards the fundamental rights such as life and personal liberty.

Notwithstanding these protections, concerns remain that the severe limitations imposed by special laws are undermining the rights of persons who have been prosecuted. Laws like

the UAPA and NDPS put more stress on the accused by extending pre-trial prison periods, making bail difficult to acquire, and reversing the presumption of innocence in some circumstances. Critics say that such provisions take away the Constitution's guarantee of their fundamental rights.

#### 2. Rights During the Trial

The foundation of India's criminal justice system is based on an unbiased trial, which guarantees that each accused person is given legal protections during the entire process. Numerous clauses in the Constitution, the CrPC, and court decisions all support this idea.

##### 2.1 Right to a Fair and Public Trial

Section 210<sup>1764</sup> of the BNSS requires that in order to promote transparency and prevent secret trials, all evidence should be recorded in front of the accused. The Constitution's Article 21 upholds the fundamental rights such as related to life and individual freedom by ensuring that due process is observed throughout the trial.

<sup>1764</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 210.

The need of expeditious trials was highlighted by the Apex Court's ruling in the case of Hussainara Khatoon, which held that delays in court processes violate Article 21.

## 2.2 Legal Representation Rights

This right is a very important entitlement for all the accused individuals. While Section 303<sup>1765</sup> of the BNSS requires that people who cannot afford legal aid receive it, Section 302<sup>1766</sup> of the BNSS states that an individual may select their own attorney. Article 39A of the Constitution, which ensures that the accused's right to a proper defence is not impeded by financial restraints, further strengthens this requirement. The Apex Court stressed in Khatri's case held that the state cannot refuse free representation by legal aid advocate on procedural grounds.

## 2.3 The Right to Testify and Be Heard

Section 351<sup>1767</sup> of the BNSS permits an accused person to explain the case's facts without being put under oath, ensuring that they have the chance to submit their defence. Additionally, if an accused person so desires, Section 284<sup>1768</sup> allows them to testify as a competent witness. The idea that a person who is accused of committing a crime, be given an equal and fair chance to present their case in line with natural justice was reaffirmed in the case of Maneka Gandhi.

## 2.4 Defence Against Incriminating Oneself

Article 20(3) protects anyone from being coerced to testify against themselves. This freedom is further upheld by rulings that prohibit forced confessions made under duress while being questioned by the police. The Apex Court affirmed the significance of consent in such treatments in Selvi's case, ruling that involuntary methods of examinations violate the right available with the accused persons.

## 2.5 Protection Against Inaccurate Information

To prevent coerced confessions, Section 22 of the BSA deems confessions obtained under duress inadmissible. Sections 23 further prohibit the admissibility of confessional statements made by any person before the police authority if not recorded before a magistrate. Additionally, Section 39(1)<sup>1769</sup> acknowledges expert opinions, ensuring that scientific evidence undergoes proper evaluation before being accepted in court.

Recognizing the significance of timely trials, Section 357<sup>1770</sup> of the BNSS mandates that cases be conducted without unnecessary delays. The Apex Court has issued guidelines instructing courts to prioritize pending criminal cases, acknowledging the fact that delays in justice amounts to a violation of their rights and this can be a ground for consideration of their case.

## 3. Right to Bail Under General Law

A key component of criminal law that avoids needless incarceration prior to trial is bail. In order to maintain a proper balance between the objectives of justice and liberty of people, the BNSS distinguishes between offences that are subject to bail and those that are not. Bail preserves the essential idea that a person is innocent unless it is proved otherwise by permitting an accused person to stay at large while guaranteeing their appearance in court.

### 3.1 Bail in Bailable Offenses

Section 478<sup>1771</sup> of the BNSS talks about the bail for crimes that are subject to it. Neither the police nor the magistrate can refuse bail if the arrested person satisfies the legal conditions for bail. Courts have repeatedly held that, absent extraordinary circumstances, bail should be issued in certain situations as soon as possible.

### 3.2 Bail in Non-Bailable Offenses

According to Section 480<sup>1772</sup> of the BNSS, the magistrate has the authority to decide whether

<sup>1765</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 303.

<sup>1766</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 302.

<sup>1767</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 351.

<sup>1768</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 284

<sup>1769</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 39(1).

<sup>1770</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 357.

<sup>1771</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 478.

<sup>1772</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 480.

to issue bail in cases involving non-bailable offences. Among the factors influencing this choice are the gravity of the offence, the likelihood that the person would escape, and the potential for evidence manipulation. Bail may be denied when an accused individual is charged with a crime that entails a life sentence or the death penalty. However, courts may exercise leniency when dealing with vulnerable individuals such as women, juveniles, or those suffering from serious medical conditions.

The right related to bail is crucial for maintaining the credibility of the legal system and preventing accused individuals from suffering needless hardship. By ensuring that prior to the trial custody is only used when it is absolutely necessary, the legal system seeks to uphold justice while safeguarding individual liberty.

### 3.3 Anticipatory Bail

Section 482<sup>1773</sup> of the BNSS provides for persons to request for bail before being arrested if they are afraid of being arrested. This clause makes it possible for someone to request bail in advance, preventing them from being held without cause. The High Court or Sessions Court considers several factors before giving anticipatory bail, including the seriousness of the accusations, the accused's criminal antecedents, and the possibility of abuse of arrest authority. The Apex Court stressed in the decision of Gurbaksh Singh Sibbia<sup>1774</sup> that anticipatory bail has to be publicly accessible in order to shield individual freedoms and stop excessive harassment. This decision upheld the principles that individual freedom should not be arbitrarily restricted and that the law should not be employed as a means of oppression.

### 3.4 Bail by Higher Courts

Section 483<sup>1775</sup> of the BNSS gives the High Courts and Sessions Courts the power to grant or revoke any bail. These courts have more latitude in determining bail requests and to see

to it that justice is being done. According to judicial precedents, denying someone bail should never be used as a pre-trial punishment; instead, judgements about release must be made based on fair and impartial criteria rather than the wilful loss of freedom. Courts have emphasised time and again that the "bail, not jail" concept ought to direct their choices, unless doing so would jeopardise the inquiry or endanger society.

### 3.5 Exceptions and Restrictions on Bail

Generally speaking, bail is a right, but because of the nature of the offences committed, some particular regulations impose stricter requirements. It is more difficult to secure bail in drug-related crimes because of Section 37<sup>1776</sup> of the NDPS Act, which requires courts to be convinced that the accused is not guilty before granting release. For those accused of terrorism, Section 43D(5)<sup>1777</sup>, severely limits bail, making it practically impossible for them to obtain release. Prioritising victim protection over accused rights, the POCSO Act, also places strict restrictions on grant of bail where the case has serious offence against minors.

### 4. Protection Against Excessive Punishment

A key component of criminal jurisprudence is the proportionality concept in sentencing, which makes sure that penalties are neither unduly severe nor out of proportion to the seriousness of the act. BNS, along with constitutional protections, safeguards individuals from cruel or extreme punishment, reinforcing the ideals of justice and fairness. Courts have consistently upheld that sentencing must be reasonable and just, preventing the imposition of unnecessarily severe penalties that do not align with the seriousness or the nature of the crime which is committed.

#### 4.1 Provisions in the IPC

The IPC has a number of clauses that encourage judicial discretion in sentencing and

<sup>1773</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 482.

<sup>1774</sup> Gurbaksh Singh Sibbia v State of Punjab (1980) 2 SCC 565.

<sup>1775</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 483.

<sup>1776</sup> Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS), s 37.

<sup>1777</sup> Unlawful Activities (Prevention) Act 1967 (UAPA), s 43D (5).



prohibit excessive punishment. Section 64<sup>1778</sup> of the BNS allows for the remission of penalties in specific circumstances, ensuring flexibility in sentencing. Section 72<sup>1779</sup> empowers courts to impose a lesser sentence than the prescribed punishment when justified. Sections 76<sup>1780</sup> and 79<sup>1781</sup> provide exemptions from criminal liability for individuals who commit offences under a mistaken belief or in good faith, preventing undue punishment in such cases. Additionally, Section 95<sup>1782</sup> excludes trivial acts from being classified as criminal offences, ensuring that minor infractions do not result in disproportionate penalties.

#### 4.2 Judicial Precedents on Sentencing Proportionality

Judicial rulings have reinforced the importance of proportional sentencing. Courts have emphasized that punishment must be appropriate to the crime and not serve as a tool for vengeance or excessive deterrence. The judiciary has been essential in upholding a fair sentencing policy by acknowledging the context in which crimes are committed and taking into account elements like purpose, seriousness, and impact.

#### 5. Provisions Preventing Abuse of Criminal Law

The Indian legal structure incorporates various safeguards to avoid the misuse of criminal law and protect individuals from false prosecution, incarceration, and harassment. These safeguards make guarantee that laws aren't used for nefarious, political, or personal gain. Mechanisms to prevent such abuses and preserve the integrity of the legal system have been developed by the BNS and court interpretations.

##### 5.1 Safeguards Against Malicious Prosecution

To prevent wrongful prosecution, Section 248(a)<sup>1783</sup> of the BNS criminalizes false

accusations made with malicious intent. Similarly, Section 223(a)<sup>1784</sup> penalizes individuals who provide false information to public authorities to initiate baseless legal proceedings. The Apex Court established stringent rules in *State of Haryana v. Bhajan Lal*<sup>1785</sup> to stop nefarious and baseless criminal cases, guaranteeing that people are not harassed by the law because of unfounded accusations.

##### 5.2 Protection Against Arbitrary Arrest

Laws stress that an arrest must be justified by evidence and based on a reasonable suspicion. An accused individual must be made aware of the reasons which led to the arrest as well as their right with respect to the bail, according to Section 36 of the BNSS. The Apex Court in *D.K. Basu* reaffirmed the idea that due process is necessary before compromising personal liberty by issuing guidelines to prohibit police brutality and illegal arrests made by them.

##### 5.3 Checks Against Misuse of Special Laws

Sometimes, laws that are put in place to safeguard vulnerable people are abused. Although crucial for safeguarding underprivileged people, the SC and ST Act<sup>1786</sup> has been scrutinised by courts to avoid abuse. According to court decisions, legitimate victims must be protected while making sure that the legislation isn't used to make unfounded allegations. Similarly, the Dowry Prohibition Act<sup>1787</sup>, 1961, has been interpreted by courts to differentiate between legitimate cases of dowry harassment and false claims meant to harass the accused.

##### 5.4 The Role of the Court in Stopping Abuse

To stop the abuse of investigative authority, the judiciary is vital. Courts have underlined the need for responsibility in the exercise of investigative authorities and have cautioned against arbitrary police action on numerous

<sup>1778</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 64.

<sup>1779</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 72.

<sup>1780</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 76.

<sup>1781</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 79.

<sup>1782</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 95.

<sup>1783</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 248(a).

<sup>1784</sup> Bharatiya Nyaya Sanhita 2023 (BNS), s 223(a).

<sup>1785</sup> *State of Haryana v Bhajan Lal* (1992) Supp 1 SCC 335.

<sup>1786</sup> Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

<sup>1787</sup> Dowry Prohibition Act 1961.

occasions. The judiciary can suppress baseless First Information Reports (FIRs) under Section 528<sup>1788</sup> of the BNSS in order to stop the legal system from being abused as a harassing tactic. By exercising judicial oversight, courts ensure that criminal law serves its intended purpose without being weaponized against innocent individuals.

## 6. Presumption of Innocence and Burden of Proof

The principle regarding presuming a person innocent, which guarantees that no person is deemed to be guilty unless decided by the competent court of law, is a cornerstone of criminal law. According to this theory, the prosecution bears the entire burden to prove. Preventing erroneous convictions and guaranteeing a trial which is fair and just depend heavily on this presumption principle.

### 6.1 Legal Basis for Presumption of Innocence

The fundamental right, including immunity from false conviction, are guaranteed by Article 21 of the Constitution. According to Sections 104 to 107 of the BSA, the prosecution is in charge of establishing an accused person's guilt, and the person is not required to prove that they are innocent. Additionally, Section 111<sup>1789</sup> of the BSA instructs courts to presume innocence unless guilt is established beyond reasonable doubt. Together, these legislative measures help to prevent injustices and guarantee that no one is convicted in the absence of strong, indisputable proof.

### 6.2 Judicial Precedents Upholding the Presumption of Innocence

Numerous court rulings have reaffirmed the principal of innocence. The Apex Court ruled in case of Kali Ram that proof beyond a reasonable doubt cannot be substituted by strong suspicion, regardless of how persuasive it may be. This decision made clear that an accused person should not be declared as convicted only on basis of any speculation or

probability. Also, the Apex Court emphasised the need for conclusive evidence before a person may be found guilty in case of Sharad Birdhichand Sarda<sup>1790</sup>. This decision reiterated the need for the prosecution to prove their case, excluding any possibility of question or conjecture.

## 7. Right Against Self-Incrimination

The right against self-incrimination is a crucial safeguard against being coerced into testifying against oneself in criminal proceedings. This privilege is based on the principle that a person cannot be forced to provide evidence that could lead to their own conviction.

### 7.1 Constitutional and Statutory Provisions

The Indian Constitution's Article 20(3) states unequivocally that no person can be compelled to give any kind of statement or evidence against himself. This clause guarantees that people cannot be coerced into making a confession or supplying information that could be used against them in court. Additionally, Section 149(2)<sup>1791</sup> of the BNSS, mandates that while a person must answer truthfully during an investigation, they are not obligated to respond to questions that may incriminate them. Further protections exist under the BSA, where Sections 31<sup>1792</sup> and 32<sup>1793</sup> prohibit the use of confessions obtained through coercion, inducement, or threats. Together, these clauses seek to stop coerced confessions and guarantee that all evidence used in court is legitimately gathered.

### 7.2 Judicial Interpretation and Important Cases

The right regarding the incriminating statements used against oneself is interpreted and upheld in many cases by the judiciary. The Apex Court held in Selvi's case that it is against the right against self-incrimination to do certain tests which are performed without consent. This ruling emphasised that no one may be forced to participate in unconsented scientific experiments that potentially gather data

<sup>1788</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 528.

<sup>1789</sup> Bharatiya Sakshya Adhiniyam 2023 (BSA), s 111.

<sup>1790</sup> Sharad Birdhichand Sarda v State of Maharashtra (1984) 4 SCC 116.

<sup>1791</sup> Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 149(2).

<sup>1792</sup> Bharatiya Sakshya Adhiniyam 2023 (BSA), s 31.

<sup>1793</sup> Bharatiya Sakshya Adhiniyam 2023 (BSA), s 32.

against their choice. In a similar way, Apex Court ruled in *Nandini Satpathy v. P.L. Dani* that the prohibition of such practices and methods is applicable throughout the course of an inquiry. The decision upheld the requirement that confessions and testimony be provided willingly and protected people from being made to make certain statements which can lead to implicating oneself.

## 8. Protection Against Unfair Evidence

The defence against unfair or biased evidence is a vital component in guaranteeing a fair trial. To avoid erroneous convictions and guarantee that only legally admissible evidence is taken into account during proceedings, the legal system includes a number of protections. The BSA, provides precise guidelines for evidence admissibility, guaranteeing that the accused is not treated unfairly or illegally.

### 8.1 Protection Against Hearsay Evidence

In general, statements made by someone who is not a direct witness are not admissible as hearsay evidence in court. Oral evidence must be straightforward and grounded in firsthand knowledge, according to Section 55<sup>1794</sup> of the BSA. Because hearsay testimony is unreliable and prevents the accused from cross-examining the witness, courts have repeatedly held that it cannot be used as the only basis for conviction. This rule guarantees that while assessing guilt, only reliable and verifiable evidence is taken into account.

### 8.2 Admissibility of Expert and Scientific Evidence

Modern legal proceedings heavily rely on scientific data, and the law recognises the need of expert witness in ensuring impartial and accurate assessments. In order to see that the trial process is conducted smoothly, Section 39(1) of the BSA allows expert opinions in disciplines like forensics, medicine, and handwriting analysis. However, the Apex Court held in *Selvi's case* that tests and technique

which can hamper the rights of the person cannot be carried out against him without the accused's agreement. The idea that scientific data must be gathered morally and in accordance with fundamental rights was reaffirmed by this ruling.

## 9. Concept of Bail and Its Importance in Criminal Law

In the criminal justice system, the provision with respect to bail is essential since it serves as both a privilege and a right, especially when the crime is such that the person accused of it can be released on bond. The BNSS distinguishes between offences that are subject to bail and provides detailed rules for granting bail. The core idea that incarceration before conclusion of trial should be the exception rather than the rule remains valid even when courts have the power to grant bail for offences that are not covered by it. The basic legal principle that there is a presumption regarding the person being innocent is broken or hampered by prolonged pre-trial jail term for them.

Arbitrarily denying bail has a direct impact on the personal liberty of a person and can also be said to be against his life as guaranteed by Article 21 of Constitution. It is not appropriate to imprison someone merely on suspicion because this could result in harassment and even abuse and misuse of law by the authorities. By granting bail, people can ensure a fair trial by preparing their defence, obtaining evidence, and speaking with legal counsel.

Delays in obtaining bail are a major factor in India's prison overcrowding, as many undertrial inmates remain behind bars for protracted periods of time. In addition to violating the accused's rights, needless detention adds to the prison system's workload. The bail system, therefore, serves as an essential safeguard against unjust imprisonment and ensures that legal proceedings remain fair and just.<sup>1795</sup>

<sup>1795</sup> Shivani and Dr. Seema Devi, 'The Law of Bail in India: An Analysis of Judicial Perspective' (2023) 11(1) International Journal of Creative Research Thoughts e954 <https://ijcrt.org/papers/IJCRT2301611.pdf> accessed 10 March 2025.

<sup>1794</sup> Bharatiya Sakshya Adhiniyam 2023 (BSA), s 55.



## 10. Bail Provisions Under the POCSO Act

Strict bail requirements imposed by the POCSO Act, have sparked debate over the accused's rights, especially with regard to the presumption related to the innocence of accused and the obligation to prove the accusations. Even in situations where the accusations were questionable or the proof was weak, those arrested under POCSO have frequently been kept behind bars for a long time without a trial. This is largely due to the stringent provisions that makes it difficult and nearly impossible under the provisions to get bail.

An accused individual is deemed to be an innocent person unless it is proven otherwise under general criminal law, which places the burden of proof on the prosecution. By placing the obligation to prove their case on the accused at the stage of bail, POCSO departs from this rule. According to Section 29 of the Act, unless shown differently, courts must assume the accused has committed certain acts which are alleged. Since courts must presume guilt even before the trial starts, this presumption directly and significantly affects bail procedures. POCSO requires the accused to provide compelling prima facie evidence of their innocence in order to be considered for bail, in contrast to regular legal proceedings where the prosecution has the burden of proving their case. Numerous sexual offences against children are classified and punished under the POCSO Act. Crimes including penetrative sexual assault, aggravated assault, and sexual harassment are defined in Sections 3<sup>1796</sup> to 10<sup>1797</sup>, which also include harsh penalties such as fines and incarceration. Sexual harassment is also expressly included by Sections 11<sup>1798</sup> and 12<sup>1799</sup> in the Act. The creation, distribution, and possession of child pornography are all illegal under Sections 13<sup>1800</sup>

to 15<sup>1801</sup>, which strengthens the strict safeguards against child exploitation.

Bail is further restricted by the POCSO legislation, which states that it can only consider a case for bail if the court is persuaded that the person is innocent and that the child victim or society would not be in danger if they were released. This raises the bar for bail to an abnormally high level, especially when the evidence is mostly circumstantial or depends only on a minor's testimony. Due to the severity of this clause, the accused frequently spends a lot of time in detention, even when the charges are unfounded or unsupported.

POCSO's reversal of the obligation to prove case makes it usually very difficult to obtain bail because the accused must present compelling exonerating evidence quickly, which is frequently tough before a full trial takes place. This provision becomes particularly problematic in cases where allegations are exaggerated or motivated by personal disputes, such as custody battles or neighbourhood conflicts. False accusations under POCSO have been reported, leading to the wrongful detention of individuals who struggle to prove their innocence due to the legal presumptions stacked against them.<sup>1802</sup>

Another major issue stemming from POCSO's strict bail provisions is the extended pre-trial detention of accused individuals. Considering the number of pending cases in the courts, POCSO trials can take several years to conclude. This means that many accused individuals—some of whom may eventually be acquitted—spend years behind bars without being proven guilty. Courts' unwillingness to grant bail, especially in situations with scant evidence, leads to needless detention and puts further strain on the already overworked legal system. These difficulties underscore the requirement of the protection of the rights of

<sup>1796</sup> Protection of Children from Sexual Offences Act 2012 (POCSO), s 3.

<sup>1797</sup> Protection of Children from Sexual Offences Act 2012 (POCSO), s 10.

<sup>1798</sup> Protection of Children from Sexual Offences Act 2012 (POCSO), s 11.

<sup>1799</sup> Protection of Children from Sexual Offences Act 2012 (POCSO), s 12.

<sup>1800</sup> Protection of Children from Sexual Offences Act 2012 (POCSO), s 13.

<sup>1801</sup> Protection of Children from Sexual Offences Act 2012 (POCSO), s 15.

<sup>1802</sup> Abhiram Nitin, 'Special Law, Regular Bail, Perverse Outcome? Assessing Judicial Prejudice in Bail Proceedings under the POCSO Act: Rajballav Prasad, Dharmander Singh, and the Delhi High Court' (2024) 17(2) NUJS L. Rev 1 <https://nujlawreview.org/wp-content/uploads/2024/09/17.2-Nitin.pdf> accessed 12 March 2025.

those who are accused as well as the protection of child victims, avoiding unwarranted and protracted detention under the Act.

#### 10.1 Judicial Interpretations on Bail in POCSO Cases

The Section 29, places the obligation to prove their case on the accused person, is one of the most hotly contested elements of bail under POCSO. Nonetheless, a number of court rulings have made it clear that this presumption is not absolute and does not deprive judges of their authority to set bail. The presumption of guilt under Section 29 does not imply that bail should be automatically refused; rather, it emphasises that judges must carefully consider the evidence before denying bail applications if the material on file does not establish a prima facie case against the accused.

Similarly, the under Section 29, there is an element of presuming the accused to be an offender is rebuttable and does not completely eliminate the possibility of bail. The courts have observed that mere allegations, without supporting material, should not result in indefinite detention of the accused, courts must conduct a thorough examination of the case at the bail stage, even in POCSO matters, and should not automatically deny bail solely based on the nature of the charges.

Courts have also acknowledged that POCSO cases are sometimes misused for personal revenge, extortion, or family disputes, and have granted bail in cases where allegations were found to be fabricated. The court stressed that POCSO should not be weaponized to settle personal scores and that judges must closely scrutinize evidence before denying bail. Similarly, Courts have granted bail after finding that the case was filed as an act of retaliation by the victim. The court cautioned that the misuse of POCSO could lead to wrongful incarcerations and stressed the need for fair bail proceedings.

#### 10.2 Challenges in Bail Under POCSO

The presumption of guilt, which sets the burden to prove their case on the accused even at the bail stage, is the biggest obstacles they must overcome under POCSO. It is quite difficult for accused people to prove their innocence early in the legal procedure because of this inversion of the typical legal premise. Courts have acknowledged that this presumption is not always valid and should not automatically lead to bail denial. However, in practice, the accused still bear an unfairly heavy burden, which frequently results in extended incarceration. The presumption that they have committed the offence which is imposed on the accused under POCSO is a significant divergence from traditional criminal law. Instead of requiring the prosecution to prove their case, Section 29 transfers the entire burden to prove, asking the accused to demonstrate their innocence. Section 30 further strengthens this presumption by assuming the accused had a guilty mental state unless proven otherwise. These provisions, while designed to protect child victims, also necessitate a careful judicial approach to prevent wrongful convictions.

Another critical issue is the prevalence of false and malicious cases under POCSO. Although the Act is essential in preventing sexual assaults against children, there have been many cases when accusations have been made with hidden agendas, including personal retaliation, family conflicts, property disputes, or other personal grievances. False accusations not only result in wrongful imprisonment but also delay justice for genuine victims. Those falsely accused face prolonged incarceration due to stringent bail provisions, suffer severe social stigma, and endure emotional and financial hardship, even if they are eventually acquitted. The effect of stringent bail requirements on juvenile offenders under the Act is among the most worrisome aspects of POCSO cases. Strict bail requirements lead to the incarceration of young people who might not be a threat to the child victim in situations where both the complainant and the accused are quite young, such as when



teenage interactions are mistakenly perceived as sexual offences. Lack of court discretion in setting bail in these situations frequently results in unwarranted incarceration, upsetting the lives of these young people and having an impact on their schooling, mental health, and prospects for the future.

Another significant worry is the problem of extended pre-trial imprisonment. Trials under POCSO can take years to complete because of the large number of pending cases, which results in prolonged incarceration for undertrial inmates. Special POCSO courts were established to address this backlog, but they remain overwhelmed with cases. Due to the stringent bail requirements, many accused people end up spending a substantial period in the jail awaiting trial. This extended pre-trial incarceration disproportionately affects young accused individuals, many of whom are between 16 and 18 years old. In cases where the accused was involved in a consensual adolescent relationship, prolonged detention disrupts their education and career prospects, creating lasting negative consequences.

One of the most controversial aspects of POCSO is its criminalization of all sexual activity involving minors, even in cases of consensual relationships between teenagers. Courts often struggle to distinguish between genuine cases of sexual exploitation and romantic relationships between adolescents. The rigid bail provisions apply even in cases where the minors involved were in a consensual relationship, leading to unnecessary legal consequences for young individuals. Families frequently misuse POCSO to criminalize relationships they disapprove of, resulting in unjust detentions.

Finally, the social stigma associated with a POCSO allegation can have lifelong consequences, even if the accused is eventually acquitted. Individuals accused under POCSO often face professional and social exclusion, with their reputations permanently damaged regardless of the trial's outcome. Their families

also experience discrimination, harassment, and emotional distress. Long-term incarceration can lead to severe mental health challenges, loss of employment, and missed educational opportunities, further exacerbating the suffering of the accused and their loved ones.

The difficulties pertaining to bail under POCSO underscore the pressing need for a more equitable strategy that upholds the accused's rights while guaranteeing justice for victims. While the Act is crucial in safeguarding children, its stringent bail provisions and presumption of guilt require careful judicial scrutiny to prevent wrongful arrests and ensure a fair legal process for all individuals involved.

#### 11. Bail Provisions Under the NDPS Act

With a view to combat drug trafficking and substance abuse in India, the NDPS Act, was passed. The Act's severe bail requirements, make it very difficult for those who are accused to obtain release, particularly in cases involving large amounts of illegal substances because looking at the seriousness of such crimes there are such provisions. Section 37, the main clause governing bail under the NDPS Act in big quantity, establishes strict guidelines for granting release in situations involving intermediate or commercial amounts of drugs.

Because Section 37 requires courts to be satisfied on two important criteria before granting bail, it puts accused people through a considerable legal obstacle. First, the court must decide if there are solid grounds to believe the accused did not commit the alleged offence. Second, the court must be convinced that the accused has little chance to commit another similar crime of if they are released on bail. These conditions make it particularly challenging for an accused person to secure bail, as they must demonstrate their innocence at a very early stage of the trial. Additionally, Section 37 has a clause, which means that its stipulations take precedence over the CrPC general bail regulations. Because of this, judges have much less discretion when it comes to

setting bail, which frequently results in extended pre-trial jail, even when the evidence against the accused is flimsy or poor. Because of Section 37's harsh restrictions, obtaining bail under the NDPS Act is extremely difficult. Before granting bail, the court must be persuaded that the has not committed this crime and will not conduct any more crimes or such activity. In situations when commercial amounts of drugs are involved, these requirements make bail all but impossible. However, in *Tofan Singh*<sup>1803</sup>, the Apex Court warned against the capricious refusal of bail and emphasised the importance of closely following procedural safeguards.

The NDPS Act's inverted obligation to prove, which is placed on the person who is accused, is among its most alarming features. The NDPS Act presumes the person to have committed the crime if they are caught in possession of narcotics, in contrast to other criminal laws that require the state to establish their case against the accused. This implies that the obligation to prove shifts from the side of prosecution to the person who is accused, who must demonstrate their innocence. Critics claim that this reversal of the "presumption of innocence" premise violates Article 21 and represents a substantial divergence from conventional criminal law.

#### 11.1 Judicial Interpretations on Bail in NDPS Cases

In the case of *Tofan Singh*, one of the most important decisions regarding such cases, the Apex Court declared that confessions given to police personnel under the NDPS Act are not acceptable as evidence. Before this decision, investigators often got self-incriminating confessions from defendants and cited them as the main justification for refusing them bail. Nonetheless, the Apex Court ruled that these confessions were against the fundamental rights under Article 21 which ensure unbiased trial and protection of person from giving statements and evidence against themselves under Article 20(3). This judgment significantly impacted NDPS bail jurisprudence, as it increased the chances of bail by preventing the

prosecution from relying solely on forced confessions and requiring independent corroborative evidence.

The Apex Court maintained the strict bail requirements under Section 37 in case of *Shiv Shankar Kesari*<sup>1804</sup>, but it also recognised the necessity to shield innocent people from unjustified incarceration. The Court decided that although bail should not be readily granted in serious drug cases, it should also not be refused in circumstances where the accused has circumstantial or weak evidence against them. This case demonstrated how crucial judicial discretion is in maintaining a proper balance between the liberty of the person and the stringent restrictions of the NDPS Act.

In case of *Rajesh*<sup>1805</sup>, the Apex Court upheld the high bar for bail under Section 37 of the act. In this case, the person was involved in a commercial amount drug case was granted bail by the High Court since there was no concrete proof connecting him to the drugs that were recovered. But the Apex Court reversed the ruling, while saying that bail should only be given in cases involving commercial bulk contraband when the accused can establish their innocence. The Court further clarified that instead of doing a comprehensive analysis of the facts, judges must base their decision about bail on the prosecution's initial argument. Additionally, in commercial-scale cases, it is much more challenging for individuals to secure bail, this decision strengthened the stringent interpretation of Section 37.

In *Mohd. Muslim v. State*<sup>1806</sup>, the matter of extended pre-trial custody under the NDPS Act was discussed. There was a legal challenge since the fundamental rights guaranteed by Article 21 had been violated by the accused's more than five years of detention without trial. Following the conclusion that protracted trial delays are not appropriate as a measure of

<sup>1804</sup> Union of India v Shiv Shankar Kesari (2007) 7 SCC 798.

<sup>1805</sup> State of Kerala v Rajesh (2020) 12 SCC 122.

<sup>1806</sup> Mohd Muslim v State (2023) 9 SCC 502.

<sup>1803</sup> Tofan Singh v State of Tamil Nadu (2020) 4 SCC 1.

discipline, the Apex Court granted bail. This ruling acknowledged that, although stringent bail requirements are required for drug-related offences, the entitlement to a prompt trial must be weighed against them. Consequently, accused individuals in commercial drug cases now have a stronger basis to seek bail if their trials are significantly delayed.

The case of Gurbaksh Sing is another important case that is pertinent to NDPS bail issues. Despite being before the NDPS Act, this case addressed the more general issue of bail before arrest under Section 438<sup>1807</sup> of the CrPC. The Apex Court ruled that if the court is of the opinion that the person has not committed the offence and there is no direct evidence also bail should not be completely disregarded, particularly in situations involving strict restrictions. This decision has been used in some NDPS cases where the accused can show that there is insufficient evidence or erroneous implication connecting them to the crime.

Bail provisions under NDPS Act remain among the most restrictive in Indian law, often leading to prolonged incarceration for undertrials. While judicial interpretations have provided some relief by emphasizing the need for corroborative evidence and protecting individuals from indefinite detention, the stringent conditions under Section 37 continue to make bail an uphill battle for accused persons. The difficulty is in making sure that the law protects the rights of people who might be wrongfully accused or put through unfair trials while simultaneously effectively combating drug trafficking.

### 11.2 Challenges in Bail Under NDPS

Although the NDPS Act was passed in order to combat the issues related to usage of drugs and to prohibit them, there are serious legal, procedural, and human rights issues as a result of its strict bail requirements. Even in situations when the evidence against an accused person is circumstantial or poor, the strict requirements under Section 37 make it very difficult for them

to obtain bail, frequently leading to extended pre-trial imprisonment. The obligation to prove their case is on the accused person under the NDPS Act, as opposed to regular criminal law, which presumes innocence. Section 35 presumes that any individual caught with narcotic substances has a culpable mental state, requiring them to prove their innocence. Similarly, Section 54 assumes that anyone in possession of banned substances is aware of their illegal nature. While these provisions aim to strengthen drug enforcement, courts have expressed concerns over potential misuse. The judiciary has stressed that evidence must be examined carefully to ensure fairness and that the presumption should not lead to automatic convictions.

Section 37, essentially overturns the criminal law premise that an accused person is presumed to be not guilty unless it is proven otherwise by the court. The accused is expected to prove that they have not committed the crime without access to the whole trial processes or supporting evidence, which is a huge and frequently unreasonable expectation brought on by this reversal of obligation to prove their case. Bail applications in such cases become much more challenging. Courts, following the strict legislative framework, often deny bail without conducting a thorough examination of the available evidence, leading to unjust and prolonged incarceration.<sup>1808</sup>

Another major challenge is the issue of extended pretrial detention and delayed trials. Since bail is rarely granted in NDPS cases, individuals often are made to remain in jail and in many cases, it takes much time even for the trial could commence. Many undertrials are compelled to serve longer detention periods than the punishment they would have gotten had they been found guilty due to the court

<sup>1807</sup> Code of Criminal Procedure 1973 (CrPC), s 438.

<sup>1808</sup> Athul V Vadakkedom, 'A Comprehensive Analysis on the Provision of Bail under Section 37 of the Narcotic Drugs and Psychotropic Substances, 1985' (2021) 2(1) Indian Journal of Integrated Research in Law 194 <https://ijlr.com/wp-content/uploads/2021/12/A-COMPREHENSIVE-ANALYSIS-ON-THE-PROVISION-OF-BAIL-UNDER-SECTION-37-OF-THE-NARCOTIC-DRUGS-AND-PSYCHOTROPIC-SUBSTANCES-1985.pdf> accessed 11 March 2025.



backlog and the sluggish trial process. This delay in justice not only affects the accused but also burdens the entire system, as overcrowded prisons continue to house individuals who have not been proven guilty.

The strict bail requirements of the NDPS Act provide significant humanitarian and basic rights issues in addition to legal and procedural difficulties. Article 21 of the Constitution, which protects the right of people, is directly violated when accused people are kept in jail for a long period of time before their trials end. Furthermore, forced confessions were routinely obtained from defendants and used against them in court before the Apex Court's historic decision in Tofan Singh, which is a clear breach of Article 20(3), which violates the rights of arrested persons.

The difficulties with bail under the NDPS Act underscore the requirement regarding a more equitable strategy that protects people's rights, especially those who might be wrongfully accused or face excessive legal hassles, while simultaneously guaranteeing strong enforcement against drug-related offences. The NDPS Act's general structure still presents major obstacles for persons requesting bail, despite the judiciary's efforts to alleviate some of these problems through progressive rulings.

### Conclusion

The right to a fair trial and the principles of natural justice are central to the Indian criminal justice system. However, the analysis reveals that special laws such as the POCSO Act and NDPS Act significantly dilute the protections ordinarily granted to the accused. These statutes, with their reverse burden clauses and stringent bail conditions, often compromise the presumption of innocence and lead to prolonged pre-trial detention. While these laws serve legitimate state interests in combating grave offences, the challenge lies in ensuring they are not misused or implemented in ways that erode constitutional safeguards. Judicial precedents have attempted to strike a balance between protecting victims and safeguarding

the rights of the accused, but systemic delays and rigid statutory frameworks still pose critical concerns. A more nuanced, rights-based approach is essential, one that respects the dignity of the accused while serving the interests of justice. Reforms must ensure liberty is not sacrificed in the name of security.

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