

IN THE HIGH COURT OF JUDICATURE AT PATNA

Raju Kumar

vs.

The State of Bihar

CRIMINAL MISCELLANEOUS No.15800 of 2025

10 April 2025

(Hon'ble Mr. Justice Rudra Prakash Mishra)

Issue for Consideration

Whether the offences involving less than small quantity of contraband under the NDPS Act are bailable in nature or not?

Headnotes

NDPS Act---section 21(a), 21(c), 37----Bailable Offences under NDPS Act---- petition for bail on allegation that less than small quantity of narcotic substance was recovered from Petitioner's possession.

Held:- since the quantity of contraband recovered is undisputably a small quantity, hence, the F.I.R. ought to have been registered under Section 21(a) of the N.D.P.S. Act instead of Section 21(c) of the said Act---- despite a prevailing misconception to this effect, Section 37 of the N.D.P.S. Act nowhere stipulates that all offences under the Act are non-bailable--- while the provision contained in section 37 NDPS Act clearly declares that every offence under the Act shall be cognizable, it does not categorically state that all offences are non-bailable----had the legislature intended to designate all offences under the Act as non-bailable, it could have done so unequivocally by explicitly stating that all offences are both cognizable and non-bailable-----offences involving small quantities under the N.D.P.S. Act are bailable and, hence, the right of bail is a matter of statutory right and in such circumstance, there is no any discretion available either to the police or the Court itself---DGP, Bihar directed to issue necessary guidelines and instructions to officers that where recovered contraband is small quantity, the offence is bailable and the suspect is entitled to bail. (Para- 10, 12, 25, 27)

Bharatiya Nagarik Suraksha Sanhita, 2023---section 4, 5----Applicability of BNSS in trial of offences under NDPS Act---- Classification of Bailable and Non-bailable Offence----offences under any law, including special enactments, are to be governed by the provisions of the BNSS, 2023 unless the special statute explicitly provides otherwise---- classification of offences under the N.D.P.S. Act as bailable or non-bailable must necessarily be determined with reference to the general principles laid down in the BNSS, 2023----The BNSS, 2023 being the overarching procedural law, is applicable to all criminal proceedings, including those under special laws, except where such special statutes contain specific provisions that override or modify the general framework----- in the absence of an express provision in the N.D.P.S. Act rendering all offences non-bailable, the general provisions of the BNSS, 2023 regarding bail will continue to govern such matters, subject to the specific exceptions carved out under Section 37 of the N.D.P.S. Act for certain grave offences--- offence under Section 21(a) of the N.D.P.S. Act, which prescribes a punishment of imprisonment for a term which may extend to one year or with fine, or with both falls squarely within the ambit of a bailable offence, as per the classification under the BNSS, 2023---- any person accused of an offence involving a small quantity under Section 21(a) of the N.D.P.S. Act is entitled to be released on bail forthwith, upon compliance with the conditions prescribed under law as per provisions of Section 478(1) of BNSS, 2023. (Para 15, 16)

Case Law Cited

Abdul Aziz v. State of U.P., 2002 SCC OnLine All 1223; **Stefan Mueller v. State of Maharashtra**, 2010 SCC OnLine Bom 1974; **Raj Kumar v. State of Rajasthan** 2019 SCC OnLine Raj 5732; **Muhammed Navas Mahamood v. Station House Officer**, 2020 SCC OnLine Ker 564 -**Relied Upon**.

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985; Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973.

List of Keywords

NDPS Act; Recovery of less than small quantity; Bailable Offences under NDPS Act; Classification of Offence as Bailable and Non-bailable under BNSS, 2023; Trial of offences under Special Law; Cognizable Offence.

Case Arising From

Rejection of Bail by the Learned Sessions Court in Muffasil P.S. case No. 13 of 2025.

Appearances for Parties

(In CRIMINAL MISCELLANEOUS No. 15800 of 2025)

For the Petitioner/s: Ms. Vaishnavi Singh, Amicus Curiae; Mr. Sanjeev Kumar Singh, Advocate

For the Opposite Party/s: Mr. Choubey Jawahar, APP; Ms. Renu Kumari, APP; Mr. Nand Kishore Prasad, APP

(In CRIMINAL MISCELLANEOUS No. 18113 of 2025)

For the Petitioner/s: Mr. Ajit Kumar Singh, Advocate

For the Opposite Party/s: Mr. Nitya Nand Tiwary, APP; Mr. Sanjay Kumar Tiwary, APP

Headnotes Prepared by Reporter: Ghanshyam, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15800 of 2025

Arising Out of PS. Case No.-13 Year-2025 Thana- KATIHAR MUFFASIL District- Katihar

Raju Kumar, S/o Ganga Prasad, R/o Sirsa, PS- Katihar, Distt- Katihar

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

with
CRIMINAL MISCELLANEOUS No. 18113 of 2025

Arising Out of PS. Case No.-1 Year-2025 Thana- BALIA BELON District- Katihar

Roshan Kumar @ Raushan Kumar Das S/O Manoj Kumar Das R/O Vill.-
Dhangri, P.S.- Balia Belon, Dist.- Katihar.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :
(In CRIMINAL MISCELLANEOUS No. 15800 of 2025)
For the Petitioner/s : Ms. Vaishnavi Singh, Amicus Curiae
Mr. Sanjeev Kumar Singh, Advocate
For the Opposite Party/s : Mr. Choubey Jawahar, APP
Ms. Renu Kumari, APP
Mr. Nand Kishore Prasad, APP
(In CRIMINAL MISCELLANEOUS No. 18113 of 2025)
For the Petitioner/s : Mr.Ajit Kumar Singh, Advocate
For the Opposite Party/s : Mr. Nitya Nand Tiwary, APP
Mr.Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA

ORAL ORDER

3 10-04-2025 The present application i.e. Cr. Misc. No. 15800 of 2025 was filed for grant of bail to the petitioner in connection with Muffasil P.S. Case No. 13 of 2025 registered for the offences under Section 8(B) and 21(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘N.D.P.S. Act’).



In the present case, 0.19 gram smack and 6.56 gram ganja were recovered which admittedly fall under the ambit of small quantity but F.I.R. was registered under Section 21(c) of the N.D.P.S. Act, although it ought to have been registered under Section 21(a) of the N.D.P.S. Act as recovery is below small quantity. *Prima facie*, this Court was of the view that offence under Section 21(a) of the N.D.P.S. Act is bailable in nature, as such, the petitioner ought to have been granted bail by police itself, however, petitioner was not granted bail by the police and the learned Sessions Judge has also rejected the bail of the petitioner. Thus, this Court vide order dated 20.03.2025 granted bail to the petitioner but for better appreciation of provisions of law, posted the matter for today. Later, Cr. Misc. No. 18113 of 2025, which is similar to the present matter, was also directed to be listed along with Cr. Misc. No. 15800 of 2025 for today.

2. Earlier vide order dated 20.03.2025, Mrs. Vaishnavi Singh was appointed as Amicus Curiae to assist this Court.

3. In both these cases, the recovery is below the small quantity but for the sake of convenience, this Court would take facts from Cr. Misc. No. 15800 of 2025.

4. Heard learned Amicus Curiae and learned APPs for the State.



5. The prosecution allegation is that total 0.19 gram smack and 6.56 gram ganja were recovered out of which 1.57 gram ganja along with one mobile was recovered from the petitioner while 0.19 gram smack and 4.99 gram ganja were recovered from co-accused Vishnu Kumar.

6. Learned Amicus Curiae submits that since the recovery in the instant case is below small quantity, the F.I.R. ought to have been registered under Section 21(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S. Act') instead of Section 21(c) of the Act. She further contends that the title of Section 37 of the N.D.P.S. Act states that "*offences are to be cognizable and non-bailable*", but it does not mention *all* offences. The deliberate omission of the word "*all*" in the title indicates the legislature's intent. Within the section itself, the word "*every*" appears in clause (1)(a), and its placement is purposeful. The N.D.P.S. Act classifies offences and prescribes punishments based on the quantity of narcotic drugs or psychotropic substances involved—small, intermediate, and commercial quantities. If the legislature had intended to make *all* offences non-bailable, it would have clearly stated so in the title itself. The absence of such wording suggests otherwise. She further submits that making *all*



offences non-bailable would defeat the very purpose of this quantity-based classification. For instance, equating possession of a small quantity (possibly for personal use) with possession of a commercial quantity would lead to the same harsh consequences, prolonged incarceration regardless of the severity or context of the offence. This approach would undermine the rehabilitative intent of the law, particularly for users, addicts, or those found in possession of small quantities. Sections 39 and 64A of the NDPS Act provide a legal foundation for prioritizing treatment over punishment, highlighting the need to reform implementation practices and place greater emphasis on de-addiction and rehabilitation. The legislature appears to have carefully crafted Section 37 to reflect a distinction. While it explicitly states that *all* offences are cognizable, it does not similarly declare that *all* offences are non-bailable. This selective usage clearly shows a legislative intent to exclude certain categories—especially minor offences—from being treated as non-bailable. Thus, the omission of the term "*all offences are non-bailable*" within the operative part of Section 37 is intentional and significant. It reflects a nuanced approach aimed at balancing the gravity of drug offences with the need for rehabilitation and proportional punishment. In this



regard, she has relied on different judgments of various High Courts which are as under:

- (i) ***Abdul Aziz v. State of U.P., 2002 SCC OnLine All 1223***
- (ii) ***Shaji v. Kerala State, decided on 18 Nov 2003,***
by a Division Bench of the Kerala High Court.
- (iii) ***Stefan Mueller v. State of Maharashtra, 2010 SCC OnLineBom 1974***
- (iv) Order dated ***23.09.2019 passed in S.B. Cr. Misc. Bail Application No. 12786/2019*** by Single Bench of Rajasthan High Court.

7. Learned APPs for the State submits that small quantity of contraband was recovered from the petitioner in both the cases , however, heading of the Section 37 says the offences to be cognizable and non-bailable.

8. This Court has considered the submission made on behalf of the parties and have gone through the various judgments relied on by learned Amicus Curiae.

9. The recovered substance in this case and their classification specifying small quantity and commercial



quantity as per the table of N.D.P.S. Act is as under:

RECOVERED SUBSTANCE-

Substance name	Ganja
Serial Number in NDPS table <i>Vide S.O. 1055(E), dated 19th October, 2001 published in the Gazette of India Extraordinary, Pt. II, Sec. 3(ii), No. 773, dated 19th October 2001.</i>	55
Quantity detained	6.56 gram
Quantity Type	Less than small
Small quantity	1 Kg
Commercial Quantity	20 kg.

Substance name	Smack (Heroin)
Serial Number in NDPS table <i>Vide S.O. 1055(E), dated 19th October, 2001 published in the Gazette of India Extraordinary, Pt. II, Sec. 3(ii), No. 773, dated 19th October 2001.</i>	56
Quantity detained	0.19 gram
Quantity Type	Less than small
Small quantity	5 gram
Commercial Quantity	250 gram

10. There is no dispute regarding the quantity of contraband i.e. 0.19 gram smack and 6.56 gram ganja, which is undisputably a small quantity, hence, the F.I.R. ought to have been registered under Section 21(a) of the N.D.P.S. Act instead of Section 21(c) of the said Act. The punishment which is



prescribed for the offence under Section 21(a) of the N.D.P.S. Act is rigorous imprisonment which may extend to one year or with fine which may extend to Rs. 10,000/- or with both. Insofar as Section 37 of the N.D.P.S. Act is concerned, it nowhere stipulates that *all* offences under the Act are non-bailable. Despite a prevailing misconception to this effect, a meticulous reading of the provision makes it evident that such an interpretation is unfounded.

11. Relevant statutory provisions viz. Section 36A, Section 37 of the N.D.P.S. Act are as under:

“36A. Offences triable by Special Courts.-
(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.”

(b)xxxxxxx

(c)xxxxx

(d)xxxx

(2)xxxx

(3)xxxx

(4)xxxx

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences



punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

It clearly states that if the offence in which punishment is more than three years, the same is triable by the Special Court and where the offence in which the punishment is less than three years, the same is triable by any Magistrate as per provisions contained in Part-II of the 1st Schedule of B.N.S.S., 2023.

“37. Offences to be cognizable and non-bailable. -- (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 [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 sub-section (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.”

12. Upon a careful appraisal of the above provision, it



becomes evident that although the heading of Section 37 of the NDPS Act, 1985 states that offences are to be *cognizable and non-bailable*, the substantive text of the section provides otherwise. Specifically, while the provision clearly declares that every offence under the Act shall be cognizable, it does not categorically state that *all* offences are non-bailable. Had the legislature intended to designate all offences under the Act as non-bailable, it could have done so unequivocally by explicitly stating that all offences are *both* cognizable and non-bailable. Instead, the section is carefully crafted to render all offences cognizable, while prescribing stringent bail conditions only for a specified category of offences—particularly those involving *commercial quantities* of contraband, or offences punishable under Sections 19, 24, and 27A of the Act. Further Section 37(1) (b) imposes specific and rigorous restrictions on the grant of bail in such cases, mandating that no person accused of these offences shall be released on bail or on their own bond unless the Public Prosecutor has been given an opportunity to oppose the application for bail and where the Public Prosecution opposes the application, the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that the accused is not likely to commit any



offence while on bail. Moreover, Section 37(2) further fortifies these limitations by stipulating that the constraints laid down in Section 37(1)(b) shall operate *in addition* to the general conditions for bail as provided under the Code of Criminal Procedure, 1973 (old Cr.P.C.) or the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 or any other applicable law in force.

13. In **“Frick India Limited -Vs- Union of India”** and others reported in **“(1990) 1 SCC 400”**, the Hon’ble Supreme Court observed as under:

“It is well settled that the heading prefixed to sections or entries cannot control the plain words of the provisions; they cannot also be referred to for the purpose of construing the provision when the words used in the provisions are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in case of ambiguity or doubt, the heading or sub-heading may be referred to as an aid in constrain the provision but even in such case it could not be used for cutting down the wide application of the clear words used in the provisions.”

14. In the instant case, though, the body of Section 37 of the N.D.P.S. Act clearly provides that every offence punishable under the Act shall be cognizable, however, it does not provide for making every offence under the Act as non-bailable. Had the legislature wanted to make every offence



under the Act non-bailable, it would have done so by clearly stipulating for the same in the body of the section and the omission to do so cannot be regarded as an inadvertent omission rather it would be presumed that it is a deliberate omission thereby legislature intending not to make every offence non-bailable.

15. Now this Court would deal with relevant statutory of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS, 2023”). Section 4 of the BNSS, 2023 is as under:-

“4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws.-

- 1. All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
- 2. All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”*

Further Section 5 of the BNSS, 2023 provides as follows: -

“5. Saving.- Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law for the



time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

16. Upon a careful perusal of the aforesaid provisions, it becomes evident that offences under any law, including special enactments, are to be governed by the provisions of the BNSS, 2023 unless the special statute explicitly provides otherwise. In the present case, as elucidated in the foregoing discussion, the N.D.P.S. Act does not categorically declare that *all* offences under the Act are non-bailable. Therefore, the classification of offences under the N.D.P.S. Act as *bailable* or *non-bailable* must necessarily be determined with reference to the general principles laid down in the BNSS, 2023. The BNSS, 2023 being the overarching procedural law, is applicable to all criminal proceedings—including those under special laws—except where such special statutes contain specific provisions that override or modify the general framework. In the absence of an express provision in the N.D.P.S. Act rendering all offences non-bailable, the general provisions of the BNSS, 2023 regarding bail will continue to govern such matters, subject to the specific exceptions carved out under Section 37 of the N.D.P.S. Act for certain grave offences. It is pertinent to note that Part II of the First Schedule to the BNSS, 2023 stipulates



that any offence punishable with imprisonment for less than three years, or with fine only, shall be classified as a bailable offence. In the absence of any express provision in the N.D.P.S. Act, 1985 categorically declaring that all offences under the Act are non-bailable, the general principles enumerated in Part II of the First Schedule to the BNSS, 2023, shall be applicable to offences under the N.D.P.S. Act as well. Consequently, it is held that the offence under Section 21(a) of the N.D.P.S. Act—which prescribes a punishment of imprisonment for a term which may extend to one year or with fine, or with both—falls squarely within the ambit of a bailable offence, as per the classification under the BNSS, 2023.

16. Bailable offence is defined under Section 2(c) of the BNSS, 2023 which is as under:

“2(c):- “***bailable offence***” means an offence which shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence;

Thus as per Section 2(c) of BNSS, 2023, only those offences would fall in the category of ‘bailable offence’ which are mentioned in the First Schedule of BNSS, 2023 or have been specifically declared as ‘bailable offences’ under any Special



Statute; and all the remaining offences are deemed to be 'non-bailable'. The same was the position in the Code of Criminal Procedure, 1973 which was replaced by BNSS, 2023 and thus, all the offences shall be 'non-bailable' unless shown and specified as 'bailable'.

17. Now, this Court will analyse the judicial pronouncements made by different High Court. In *Abdul Aziz v. State of U.P., 2002 SCC OnLine All 1223*, the Allahabad High Court observed as under in paragraphs 2, 8, 9 and 10:

"2. The facts of this case are that a case under Section 8/21 N.D.P.S. Act has been registered against the petitioner at case crime No. 257 of 2001, police station Maduadeeh, district Varanasi. According to prosecution the petitioner was found in possession of 2.5 gm. of heroine....

8. From the analysis of provisions of section 37 of the N.D.P.S. Act and sections 4 and 5 of the Cr. P.C. it is clear that except or offences under sections 19, 24 and 27-A of the Act, the provisions for bail as given in the Cr. P.C. will apply. The offences no doubt are also cognizable and to this extent also the provisions of the Act will prevail over the provisions of the Cr. P.C. Therefore, in the matter of bail the provisions of Cr. P.C. will apply in the present case.

9. Bailable offences have been defined under clause (a) of section 2. Cr. P.C. which means offences which is shown as bailable in the first Schedule, or which is made bailable by any other law for the bail being in force and "non-



bailable offence” means any other offence. The first Schedule of Cr. P.C. consists of two parts, the first part is regarding the offences under the I.P.C. and second part is regarding offences against other law. The second part provide that if the offence is punishable with imprisonment for less than three years or fine only it shall be bailable and can be tried by any Magistrate.

10. In view of the above the provisions, the offence alleged to have been committed is a bailable offence.”

18. In *Stefan Mueller v. State of Maharashtra, 2010*

SCC OnLine Bom 1974, the Bombay High Court observed as under in paragraphs 10 and 11:

“10.The title or heading of section 37 of NDPS Act shows that offences shall be cognizable and non-bailable. However, as noted above, in the body of the section, the legislature has only declared that all the offences under the Act shall be cognizable, but the legislature has not declared that all the offences under the Act shall be non-bailable. In clause (b) only it speaks about the limitations on granting of bail in addition to the limitations under the Cr.P.C. while granting bail. Therefore, the provisions of Cr.P.C. will have to be looked into to find out whether offences under the NDPS Act are bailable or not.

11. First schedule to the Cr.P.C. 1973 is about classification of offences. Against each offence, it is specifically mentioned whether offence is cognizable or non-cognizable, whether it is bailable or non-bailable and by what court it is triable. Part I of the Schedule deals with offences under the Indian Penal Code, while Part II deals with offences against other laws. Therefore, Part II will be relevant to find out whether offences under the NDPS Act are bailable or not. In part II, the first



entry provides that if the offence is punishable with death, imprisonment for life or imprisonment for more than 7 years, it is non bailable. As per second entry, if the offence is punishable with imprisonment for 3 years and upwards but not more than 7 years, it is also non-bailable. The third entry which is the last entry in this Part, declares that if the offence is punishable with imprisonment for less than 3 years or with fine only, it is bailable and non cognizable. There are several offences under the NDPS act which are punishable with imprisonment which may extend to 10 years and for period which may extend to 20 years. There are certain offences which are punishable with imprisonment for less than 3 years or with fine. The offences under Section 20(b) (ii) (A) and Sec. 27 are such offences as they are punishable with imprisonment which may extend to six months or with fine. In view of the punishment prescribed for these offences, they fall in third entry in part II of the Schedule and, therefore, these offences will be bailable. As noted earlier, S.37(10(a) declares that all the offences under the NDPS Act are cognizable notwithstanding the provisions of Cr.P.C. If that provision would not be there, by virtue of classification in Part II, these offences would have been noncognizable, but they are made cognizable by specific provision of Section 37(1)(a).”

19. In **Raj Kumar v. State of Rajasthan 2019 SCC OnLine Raj 5732**, Para 8, Rajasthan High Court observed, “By virtue of Section 37(1) of the NDPS Act, the offence has become cognizable, however, as per Item No. 3 in the list (In Part II of the First Schedule) offence is clearly bailable.”

20. In **Muhammed Navas Mahamood v. Station House**



Officer, 2020 SCC OnLine Ker 564, decided on February 6, 2020, the Kerala High Court observed as under in paragraphs 14 and 19:

“14. The offence under Section 22(a) of the Act is punishable with rigorous imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both. The punishment prescribed for the offence under Section 20(b)(ii) A of the Act is also the same. It follows that as per the last entry in Part II of the First Schedule of the Code, the aforesaid offences are bailable.

19. The right to claim bail under Section 436(1) of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences, there is no question of discretion in granting bail. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right. So long as the accused is prepared to give bail, the Court is bound to grant bail to a person accused of a bailable offence (See Rasiklal v. Kishore : (2009) 4 SCC 446 : AIR 2009 SC 1341 and Talab Haji Hussain v. Madhukar Purshottam Mandkar : AIR 1958 SC 376). Bail can be refused to a person accused of a bailable offence only under the circumstances mentioned in Section 436 (2) of the Code (See Wilson v. State of Kerala: 2011 (2) KHC 129 : 2011 (2) KLT 596).

21. Further in a recent judgment dated 18.12.2024, a Single Bench of the High Court of Punjab and Haryana in the case of ***Kuldeep Singh alias Keepa versus State of Punjab*** held as under in paragraph 80 and 81:

“80. In the absence of explicit legislative



clarification, the only viable recourse available to the judiciary is an interpretative reliance on Schedule II of the BNSS 2023, which delineates the classification of offences based on the prescribed sentence. As per the final column of this Schedule, offences carrying a sentence of less than three years are categorically designated as non-cognizable and bailable. However, within the framework of the NDPS Act, offences are explicitly classified as cognizable in the corresponding column of the Second Schedule. Consequently, the designation of 'non-cognizable' cannot be extrapolated to NDPS offences, given that the Act operates as a Special Legislation with an overriding effect.

81. Nevertheless, while the NDPS Act unequivocally declares such offences as cognizable, it remains silent on their bailability. In light of this legislative omission, the intent of the legislature must be discerned through Schedule II of the BNSS 2023, which unambiguously stipulates that all offenses carrying a sentence of less than three years shall be treated as bailable. Since the maximum sentence that may be imposed for an offense involving a small quantity under the NDPS Act is one year, it logically follows that such an offense must be construed as bailable under the prevailing legal framework.”

22. Recently, in the case of ***Bilal Hussain versus The State of Assam*** by order dated 03.01.2025, a Single Bench of Gauhati High Court held as under in paragraphs 17 and 18:

“17.On perusal of the above provisions, it appears that all offences under any other law shall be dealt with according to the provisions of BNSS subject to any specific provisions to the contrary in the special law. In the instant case, as discussed hereinbefore, as the NDPS Act, 1985 does not



provide specifically that all the offences under the said Act shall be non-bailable, hence, the question as to which of the offences under NDPS Act, 1985 are bailable and which are non-bailable can be answered only with the aid of the general provisions that effect, contained in the BNSS 2023. The general provisions of the BNSS will apply to all proceedings under any special law unless the special law provides for any special provision in that regard.

18. It is pertinent to mention herein that, the Part II of the 1st Schedule to BNSS, 2023 provides that if the offence is punishable with imprisonment for less than 3 years and with fine or with fine only same has been categorized as a bailable offence. Thus, in absence of a specific provision in the NDPS Act, 1985 making all offences under the said Act as non-bailable, the general provisions provided in Part II of the 1st schedule of the BNSS, 2023 would be applicable for the offences under NDPS Act, 1985 also. Accordingly, it is held that the offence under section 21(a) of the NDPS Act, 1985, which provides for punishment less than 3 years, is a bailable offence.”

23. After a thorough examination of the relevant statutory provisions of the N.D.P.S. Act and the BNSS, 2023 as well as the judicial pronouncements of various High Courts referred to hereinabove, this Court finds itself in full concurrence with the view expressed by the various High Court that offences involving *small quantities* under the N.D.P.S. Act are bailable. Given the statutory silence on this specific issue, and upon a comprehensive reading of Sections 4 and 5 of the BNSS, 2023, it is evident that all offences under any other law are to be dealt



with in accordance with the procedural framework of the BNSS, 2023, except where the special law expressly provides to the contrary. The BNSS, 2023 outlines the classification of offences primarily based on the severity of the punishment prescribed. It is pertinent to note that Part II of the First Schedule to the BNSS, 2023 stipulates that any offence punishable with imprisonment for *less than three years*, or with *fine only*, shall be treated as a bailable offence. Since an offence under the N.D.P.S. Act involving a *small quantity* of contraband carries a maximum sentence of one year, it logically and legally follows that such an offence squarely falls within the ambit of a bailable offence, as per the classification under the BNSS, 2023. Therefore, in the absence of an explicit provision in the N.D.P.S Act declaring *all* offences as non-bailable, the general provisions laid down in Part II of the First Schedule of the BNSS, 2023, shall be applicable to offences under the N.D.P.S. Act as well. This construction upholds the legislative intent and ensures consistency in the procedural treatment of minor offences across statutes.

24. In ***Muhammed Navas Mahamood v. Station House Officer (supra)***, wherein the Court authoritatively observed that the right to claim bail under Section 436(1) of the Criminal



Procedure Code (Cr.P.C.) in the case of a bailable offence is absolute, indefeasible, and unconditional. The Court further elucidated that in the case of bailable offences, the grant of bail is not a matter of judicial discretion but a statutory mandate. There exists no ambiguity that in bailable offences, an accused person is entitled to be released on bail as a matter of right, without the necessity of establishing any exceptional grounds or circumstances. This Court finds itself in full agreement with the well-reasoned view adopted by the Kerala High Court. The legal position is crystal clear—when an offence is classified as bailable, the accused is entitled to be released on bail upon arrest, subject only to the execution and furnishing of the requisite bail bonds or sureties, as may be directed. No formal bail application is required to invoke this right, and the refusal to grant bail in such cases would amount to a violation of the statutory safeguards enshrined under the procedural law. Therefore, any person accused of an offence involving a small quantity under Section 21(a) of the N.D.P.S. Act is entitled to be released on bail forthwith, upon compliance with the conditions prescribed under law as per provisions of Section 478(1) of BNSS, 2023.

25. As such, this Court unequivocally holds that the



offence under Section 21(a) of the *Narcotic Drugs and Psychotropic Substances Act, 1985*, which prescribes a punishment of imprisonment for a term not exceeding one years, is to be classified as a 'bailable offence'. Accordingly, where the contravention under the N.D.P.S. Act involves a 'small quantity' of narcotic drugs or psychotropic substances, as per the relevant notification, such offences shall be treated as "bailable" in nature. In the case of bailable offence, the right of bail is a matter of statutory right and in such circumstance, there is no any discretion available either to the police or the Court itself. The accused is entitled to be released on bail automatically upon arrest, subject only to the execution and furnishing of the requisite bail bonds or sureties, as may be directed.

26. Registry is directed to circulate a copy of this order to all the Principal District and Sessions Judge for its circulation amongst all the judicial officers of the State of Bihar for strict compliance of the same.

27. In addition, a copy of the order be also sent to the Director General of Police, Bihar who will also apprise the same to all Police Officers of the State and is also directed to issue necessary guidelines and instructions to officers that where



recovered contraband is small quantity, the offence is bailable and the suspect is entitled to bail.

28. Before parting with the case, I record my appreciation for the able assistance rendered by Mrs. Vaishnavi Singh, learned Amicus Curiae.

29. The Patna High Court Legal Services Committee is, hereby, directed to pay Rs. 7,000 (Rupees Seven Thousand) to Mrs. Vaishnavi Singh, learned Amicus Curiae in Cr. Misc. No. 15800 of 2025 as consolidated fee for the services rendered by her.

(Rudra Prakash Mishra, J)

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