2026 INSC 870

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(s). ____________ OF 2026**
(@Special Leave Petition (Crl.)No(s). 14185 of 2025)

**UNION OF INDIA ... APPELLANT(S)**

**VERSUS**

**CHIDIEBERE KINGSLEY NAWCHARA & ORS. ... RESPONDENT(S)**

**J U D G M E N T**

**SANJAY KAROL, J.**

For ease of reference, this judgment is divided as follows:

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**1.** Leave Granted.

## The Appeal

**2.** At first glance, the scope of this appeal appears to be limited. Union of India is aggrieved by the grant of bail to the respondent(s)-accused in connection with Crime No. 37 of 2023 registered with the Directorate of Revenue Intelligence[1] branch under Sections 8(c), 21(c), 23(c), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985[2] and as such, is in appeal thereagainst. All that would be required of this Court then would be to adjudicate the correctness of the impugned order[3] on the well-settled principles of appeal against grant of bail, as recently encapsulated by this Court in ***Ashok Dhankad v. State (NCT of Delhi)***[4]. However, we only wish it were so. Instead, what has come to light in these proceedings is deeply unsettling.

**3.** The respondent-accused, namely Chidiebere Kingsley Nawchara, was arrested on 16th March 2023 in connection with a total of 4935 grams of heroin recovered from the possession of one

[1] DRI
[2] NDPS Act/The Act
[3] Criminal Bail Application No. 4139 Of 2024 dated 5th May 2025
[4] 2025 SCC OnLine SC 1690

Damodar Surya Rama Prasad Dubey, who was apprehended at the Chhatrapati Shivaji Maharaj International Airport, Mumbai, upon his return from Addis Ababa, Ethiopia. This 'consignment', it was revealed, was to be further delivered to the respondent – accused by one Hekatoli Sumi, a resident of Delhi. Her statement led to his arrest. The investigation was carried out and completed, culminating in the filing of the chargesheet in NDPS Spl. Case No. 1449 of 2023 on 6th September 2023.

3.1 The relevant extracts of the chargesheet are as below:

> "x. She voluntarily tendered a red coloured envelope having golden print on it, containing 500 USD, which she was supposed to handover to Mr. Damodara Surya Rama Prasad Dubey after collecting trolley bag from him on 15.03.2023. The said red coloured envelope, containing 500 USD was handed over to her by one lady who identified herself as Ms. Helen. Ms. Helen told her to give the envelope to Mr. Damodara on the instructions of Mr. Chedibere.
>
> xi. Mr. Chedibere offered her R.5000/- for collecting the said trolley bag from Mr. Damodara Surya Rama Prasad Dubey and she agreed to the offer made by Mr. Chedibere as she was already in a financial hardship.
>
> … … …
>
> …
>
> i. He was in contact with Ms. Hikatoli Sumi since he was released on bail from Tihar Jail, New Delhi around Hune, 2022. He stated that when he came out on bail from Tihar Jail, he had no job prospects available for him nor he had enough money to do business in India, Since his passport was also seized by government agency, he could not travel back to Nigeria also. A such, he indulged himself in

smuggling of drugs again. He stated that he used to contact Ms. Hikatoli Sumi motstly through whatsapp only. He knowingly hid this fact in his earlier statement recorded on 15/16.03.2023 in the office of DRI, Delhi Zonal Unit.

ii. He had instructed Ms. Hikatoli Sumi to collect the trolley bag from Mr. Damodara Surya Rama Prasad Dubey on 15.03.2023. He had informed Ms. Hikatoli Sumi about the fact that the said trolley bag was containing some narcotic drugs concealed in it. He promised to give Ms. Hikatoli Sumi Rs.20000/- in cash for taking the delivery of the said trolley bag from Mr. Damodara Surya Rama Prasad Dubey. He also instructed Ms. Hikatoli Sumi that Ms. Helen (Mob. +91 8798508619) would also be present on the spot while she would take the delivery of the said trolley bag from Mr. Damodara Surya Rama Prasad Dubey. He also instructed Ms. Hikatoli Sumi that after taking the trolley bag from Mr. Dubey, she needed to handover the trolley bag to Ms. Helen and as per promise she would get Rs.20,000/- cash from Ms. Helen.

iii. He was shown two photographs and he identified the person in both the photographs as Ms. Helen alias Oge.

iv. He in close coordination with Ms. Helen alias Oge used to take delivery of narcotic drugs from various passenger landing in New Delhi, through their Indian contacts who were in need to money. Thereafter, he used to further coordinate to deliver the said drugs to the ultimate received on his phone. On being categorically asked as to who used to give instructions for the said movement of drugs from one place to another, he sated that one Ms. Helen used to give him instructions. On being asked about further details of Ms. Helen, I stated that I did not have any further details of her.

v. He reiterated that he deleted the whatsapp messages and chats with Ms. Hikatoli Sumi as he had instructed her to collect the trolley bag, concealing the narcotic drug, from Damodara Surya Rama Prasad Dubey. He did so since he was afraid that his involvement in the smuggling of the narcotic substance would be revealed and that his nexus with

> the drug smuggling syndicate would be established easily.
>
> vi. He was aware that Heroin is a Narcotics substance covered under the Narcotics Drugs & Psychotrophic Substances Act, 1985, and is illegal to be brought/ carried in India. However, he had knowingly helped the drug smuggling syndicate to smuggle Heroin into India in greed of money only.
>
> … … … …
>
> 25. Forensic examination of mobile device of Ms. Hikatoli Sumi was conducted under Panchnama dated 04.09.2023 **(RUD-35).** Some incriminating data was retrieved during the forensic examination of the data from the WhatsApp chats between her and Mr Chidiebere Kingsley Nawchara **(RUD-36).** On going through the chats it was found that Mr Chidiebere Kingsley Nawchara was shared the picture of Mr. Damodara Surya Rama Prasad Dubey to her on 15.03.2023 for identification of Mr. Dubey. Further he had shared the contact details and addresses of Mr. Damodara Surya Rama Prasad Dubey and directed Ms. Hikatoli to collect the drug consignment.”
>
> *(emphasis supplied)*

3.2 On 12th September 2024, the learned Special Judge for NDPS Cases at Greater Mumbai, rejected the respondent-accused’s application for bail in NDPS Spl. Case No.1449 of 2023. From a perusal of paragraph 7 of the order, the following reasons are revealed: *(a)* he has been alleged to be the mastermind of the trafficking of drugs; *(b)* he is a habitual offender, he stands convicted by the Sessions Court, Patiala House, New Delhi in NDPS

Case No. 8510/2016[5] and was out on bail having been released by the Delhi High Court, whereafter he partook in the instant crime and *(c)* he is a member of the international drug trafficking syndicate as evidenced by the *WhatsApp* chats placed on record.

**4.** It was an application seeking regular bail, in which the order impugned before us came to be passed. The relevant extracts of the impugned order are as follows:

> "*Prima facie* there is no answer given in the Affidavit-in-Reply to the questions which have been *prima facie* listed by the Court in paragraph Nos.2 and 4 of its aforesaid order. Said Affidavit-in-Reply is nothing but a mere reiteration of the facts of the case and nothing more. The prosecution is relying upon WhatsApp chats as argued by Mr. Thakker through VC. Said chats unless they show the live link to establish the complicity of the person involved in the crime cannot be referred to and relied upon at the stage of bail as held by the Supreme Court in the case of ***Bharat Chaudhary Vs. Union of India (2021) 20 SCC 50.*** At the stage of bail complicity of the Applicant cannot be considered on the basis of hearsay evidence which is sought to be referred to and relied upon by the prosecution. That apart case of the Applicant is *prima facie* fully covered by the decision of Supreme Court in the ***Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC*** as opined and held by this Court in the previous order. Since indictment of Applicant is solely based on the statement of co-accused person and the facet of his long incarceration in prison for more than 2 years 2 month pending trial and commencement and completion of trial being a distinct impossibility, in that view of the matter I am of the opinion that Applicant can be released on bail.

[5] By judgment dated 21st December 2019

5. In view of the above *prima facie* observations, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
(ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also the trial Court;
(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
(iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m. to mark his presence. If the first Tuesday of the said months falls on a holiday and/or non Court working day, the Applicant shall mark presence on the next working day;
(v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
(viii) In case of any infraction of the above conditions and/ or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation bail; and
(ix) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of Frank Vitus v. Narcotics Control Bureau & Ors.

## Orders Passed by this Court

**5.** Notice in the Special Leave Petition was issued on 8th September 2025, and the matter was heard from time to time. This Court passed a number of orders. Those relevant for final determination of this appeal are summarised hereinbelow:

5.1 On 19th September 2025, the Director-General of Police for the State of Maharashtra[6] was directed to take steps to arrest the respondent-accused and get in touch with the Embassy of the Federal Republic of Nigeria to secure his presence at Trial.

5.2 On 31st October 2025, pursuant to earlier orders of the Court, *(a)* The Director General, DRI, Delhi Zonal Unit; *(b)* Principal Additional Director General, DRI, Delhi Zonal Unit; *(c)* Principal Additional Director General, DRI, Mumbai Zonal Unit and (d) Commissioner of Police, Navi Mumbai, were present in Court, and certain affidavits, consequent upon the discussion that took place, were directed to be filed. It was also recorded that the respondent-accused was untraceable and that a look-out notice had been

[6] DGPM

issued. Steps were directed to be taken against the persons who had acted as sureties for him.

5.3 We passed a detailed order on 18th November 2025 when it came forth in the affidavit filed by Deputy Director, DRI, Mumbai Zonal Unit, that the address provided by the surety was non-existent and that the name of the employer he provided had made a categorical statement that no such person had ever been employed with them. The relevant parts of the order are as below:

> "3. In response thereto, the petitioner filed an affidavit. We have perused the said affidavit dated 13.11.2025, filed by Sri Kumar Ambrish, Deputy Director, DRI, Mumbai Zonal Unit. Paragraph nos.2.8, 2.9, 2.10 and 2.13 thereof reads as under:
>
> > 2.8. As the accused was not traceable, details of the Surety have also been verified and found to be non-existent. The DRI officers visited the address provided by the surety - Shri Sushil Balkrushna Jadhav, Room No 516, Gangabai Mansion, Parel, Mumbai, on 31.10.2025 (Annexed hereto and marked as Annexure A12 - pg. 29-31), and the same was found to be non-existent. The residents and members of the society also stated that they are not aware of any person by name Shri Sushil Balkrushna Jadhav, associated with the said premises i.e. Gangabai Mansion.
> >
> > 2.9. Further, DRI officers visited the office premises of M/s Emkay Global Financial Services Ltd., which the surety, Shri Sushil Balkrushna Jadhav had declared as his employer firm. M/s Emkay Global Financial Services Ltd., vide its letter dated

06.11.2025 (Annexed hereto and marked as Annexure A13 pg. 32), categorically stated that no such person was ever employed in their office.

2.10. As the Surety, Shri Sushil Balkrushna Jadhav, had provided his bank account details in the Surety Bond, the Petitioner, vide letter dated 10.11.2025 (Annexed hereto and marked as Annexure A14 pg. 33), approached the concerned IDBI Bank, Parel Branch, Mumbai, seeking KYC details, the account opening form, and other related information available with the bank. The Bank, vide e-mail dated 12.11.2025 (Annexed hereto and marked as Annexure A15-pg. 34-40), informed that no such account exists with them either in the name of Shri Sushil Balkrushna Jadhav, or with said PAN or Aadhar number, and that the customer ID number mentioned belongs to some other customer of a different branch.

... ... ...

2.13. As the Surety could not be traced and the address provided was found to be incomplete or non-existent, the Petitioner, vide application dated 12.11.2025 (Annexed hereto and marked as Annexure A19 pg. 46-50) has approached the Trial Court seeking issuance of notice to Surety Shri Sushil Balkrushna Jadhav and forfeiture of the surety bond furnished by him under the provisions of Form 50 read with Section 491 of BNSS, cancellation of bond under section 492 of BNSS, and issuance of a non-bailable warrant to secure his presence before the Court. Furthermore, the Petitioner has also sought the Court's permission to ask the advocate who had identified the Surety and signed on the surety papers, about the identity, address, credentials, and whereabouts of the surety."

> 4. The affidavit brings to light yet another serious issue concerning the manner in which Courts are accepting sureties, more particularly, in cases involving heinous offences. It has been brought to our notice by the learned Additional Solicitor General that in at least 38 cases investigated by the Narcotics Control Bureau (NCB) and in 9 cases investigated by the Directorate of Revenue Intelligence (DRI), foreign nationals, particularly from Nigeria and Nepal, have absconded, after furnishing sureties which perhaps may be fake.
>
> 5. The problem of impersonation by sureties appears to be rampant in certain States. Whether the surety module prepared by the National Informatics Centre for Trial Courts in India is functional and operational, and what other mechanism exists for verification of the genuineness of sureties, are issues which, in our considered view, require a comprehensive examination.
>
> 6. In this background, we implead the Unique Identification Authority of India (UIDAI) as a party respondent to the instant petition. Mr. Gurmeet Singh Makker, learned counsel, accepts notice on behalf of UIDAI; hence, the formal service of notice is waived.
>
> … … …
>
> 9. Before issuing any further directions, we call upon the concerned Trial Court Judge (Mr. V.M. Sundale, learned Additional Sessions Judge, Mumbai) to furnish a detailed report relating to the acceptance of sureties in the present case, including the steps taken by him for complying with the statutory requirements. Such a report shall be submitted within a period of two weeks from today.
>
> (emphasis supplied)

*Vide* the very same order dated 18th November 2025, Mr. Sidharth Luthra, learned senior counsel, was appointed *amicus curiae* (pro bono) to assist the Court.

5.4 The Ministry of Electronics and Information Technology[7] was given liberty to file its affidavit by order dated 17th December 2025.

5.5 Considering the issue of sureties, which is undoubtedly one of everyday application, all the States and Union Territories were asked to provide the relevant provisions and rules applicable in their States to Mr. Suryaprakash V. Raju, learned Additional Solicitor General appearing for the Appellant- Union of India. The same direction was given to all the Standing Counsel for the High Courts.

5.6 On 27th February 2026, based on the inputs of all concerned, the report of the learned *amicus curiae* was perused and taken on record.

**Analysis And Consideration**

**The NDPS Act- Scheme & Relevant Provisions**

**6.** In 1961, India was part of the Single Convention on Narcotic Drugs and in 1971, the Convention on Psychotropic Substances. In view of these international obligations, the Parliament enacted the

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[7] MeitY

NDPS Act, 1985[8], replacing the Opium Acts of 1857 and 1878 and the Dangerous Drugs Act, 1930.

Let us understand the scheme of the NDPS Act at the outset.

6.1 Chapter I houses the definitions and the power to amend the list of psychotropic substances. Section 2 provides definitions of key terms such as narcotic drugs, psychotropic substances, and cannabis.

6.2 Chapter II establishes the framework, setting out the basis of the functioning of the provisions of the Act. Section 4 requires the Central Government to take measures to prevent and combat drug abuse and illicit trafficking, and Sections 5 and 7 provide for the appointment of officers at the Central and State level.

6.3 Chapter III houses the principle of total prohibition with limited exceptions. This is the primary basis of the Act. Section 8 is the main provision, which postulates that activities such as production, possession, sale, purchase, transport, and consumption of narcotic drugs are prohibited. What is exempted from being prohibited thereby is the use thereof for medical or scientific purpose**,** as may be permitted under law. Section 9 grants

[8] https://narcoticsindia.nic.in/Notifications/National_Policy_on_NDPS_published.pdf

power to the Government to regulate and permit such activities through rules and licences. What can be understood as the intent of the Legislature, therefore, is not absolute prohibition but strictly controlled regulation.

6.4 Chapter IV contains Offences and Penalties. Sections 20, 21, and 22 deal with the punishment for contravention in relation to cannabis, manufactured drugs, and psychotropic substances, respectively. Punishments for the offences under this Act are based on the quantity of the substance found; in other words, a small quantity carries a relatively lesser punishment as against a commercial quantity, which, as the name suggests is much larger. Sections 23 and 24 also impute liability on those who import and export. Section 27 provides the punishment for consumption of any drug or substance listed in this Act, and 27A provides punishment for financing illicit traffic and harbouring offenders. Deterrence underlies all the provisions in this chapter. Sections 36 to 36D discuss the constitution of Special Courts and the powers exercisable by such Courts. Section 37, which provides that offences under this Act would be cognizable and non-bailable, is of prime relevance for us.

6.5 Chapter V (Sections 41 to 68) details the procedure to be followed in investigating and prosecuting offences under this Act. For instance, Section 42 provides for the power of entry, search, seizure and arrest without warrant and authorisation; Section 52A details the procedure for disposal of seized narcotic drugs and psychotropic substances.

It is important to note that Sections 35, which is part of Chapter IV, and 54, which is part of Chapter V, both put in place presumptions regarding culpable mental state and possession of illicit articles, respectively. This means that once the prosecution establishes basic facts, the burden of proof is shifted onto the accused.

6.6 How to deal with forfeiture of illegally acquired property is given in Chapter VA of the Act. Section 68A extensively provides for the application of this chapter; Section 68B provides for a list of definitions to be used under this Chapter; Sections 68F and 68I provide for seizure or freezing of illegally acquired property and forfeiture of property in certain cases, respectively.

**7.** The available statistics reveal that there has been a sharp increase in the number of offences registered under this Act-almost doubling between 2018 and 2023. Data from the NCRB verifies this statement. The same is as follows:

| Category | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|
| Total States | 70,447 | 57,600 | 75,881 | 1,11,823 | 1,16,051 |
| Total UTs | 2,274 | 2,206 | 2,450 | 3,413 | 3,959 |
| **TOTAL (ALL INDIA)** | **72,721** | **59,806** | **78,331** | **1,15,236** | **1,20,010** |

**8.** Time and again, the dangerousness of offences involving this Act has been highlighted by this Court. For instance, a coordinate Bench in ***Gurdev Singh v. State of Punjab***[9], while considering the imposition of higher sentence in a case involving 1kg heroin, observed:

> "**16.** While considering the submission on behalf of the accused on mitigating and aggravating circumstances and the request to take lenient view and not to impose the punishment higher than the minimum sentence provided under the Act it should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable; it causes deleterious effects and deadly impact on the society; they are a hazard to the society. <u>Organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and</u>

[9] (2021) 6 SCC 558

> the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on the society as a whole…"
>
> (emphasis supplied)

In ***Union of India v. Kuldeep Singh***[10]**,** this Court observed:-

> **"17.** An offence relating to narcotic drugs or psychotropic substances is more heinous than a culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society, besides shattering the economy of the nation as well. That the legislature intended to make the offences under the Act so serious to be dealt with sternly and with an iron hand is made clear by providing for enhanced penalties, including even death sentence, in certain class of cases, when convicted for the second time."
>
> (emphasis supplied)

**Bail under Special Statutes**

**9.** The Latin maxim **"***generalia specialibus non derogant"* means that general laws do not override special laws. When two statutes seem to apply to the same subject, one being general and the other dealing with a specific issue, the special law prevails within its field. This helps to ensure that the purpose behind creating specific rules for particular situations is not defeated by broader provisions. This becomes clear with examples. The Companies Act, 2013 is a special law dealing with company matters, while the Code of Civil

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[10] (2004) 2 SCC 590 (2-Judge Bench)

Procedure, 1908 lays down general rules for civil litigation. For disputes related to company matters, procedure under the Companies Act is to be followed instead of the general civil procedure. A second example is the Consumer Protection Act, 2019, which provides for a mechanism to deal with complaints about defective goods or deficiency in services. They are handled by Consumer Dispute Redressal Commissions because the special law offers a more direct remedy. Overall, it is a simple rule of interpretation. When a general law and a special law both are applicable, the special law is to be given preference. The examples referred to here pertain to civil actions. Regarding criminal law too, there are a number of examples, a few of which will be discussed further in this judgment.

**10.** Before proceeding to the special statutes, it is important to take note of '*bail*' under general criminal law so as to facilitate the juxtaposition of the same. As far back as 1931, the Allahabad High Court in ***Emperor v. H.L. Hutchinson***[11] had held, in regard to the Meerut Conspiracy Case, that *"bail should be the rule and refusal of bail should be the exception"* as per C.R. Mukerji J. Further,

[11] 1931 SCC OnLine All 14 (two-Judge Bench)

Boys J. in the same judgment, with respect to the objective of incarceration of an accused, observed:

> "As to the object of keeping an accused person in detention during the trial, it has been stated that the object is not punishment; that to keep an accused person under arrest with the object of punishing him on the assumption that he is guilty, even if eventually he is acquitted, is improper. This is most manifest. The only legitimate purposes to be served by keeping a person under trial in detention are to prevent repetition of the offence with which he is charged, where there is apparently danger of such repetition, and to secure his attendance at the trial. The first of these purposes clearly to some extent involves an assumption of the accused's guilt, but the very trial itself is based on a *prima facie* assumption of the accused's guilt and it is impossible to hold that in some circumstances it is not a proper ground to be considered. The main purpose, however, is manifestly to secure the attendance of the accused.
>
> The matters for consideration in this particular case, to which I have given my best attention, may be enumerated as follows:—
>
> (*a*) Whether on the facts set out in the affidavit filed on behalf of the Crown and in the replies written and oral of the applicant there is or is not reasonable ground for believing that the applicant has committed the offence with which he is charged. The applicant has contended that he is being prosecuted only because he holds certain opinions. It is a contention which, on the materials set out in the affidavit for the Crown, *prima facie* has no force in it; whether it be established eventually or not, the suggestion for the Crown is that he is promulgating his opinions and endeavouring to persuade others to those opinions with a view to a resort to violence sooner or later to enforce those opinions. It is not desirable, in view of the fact that it will be for the Sessions Judge to pronounce judgment on the merits of the evidence, for me to say anything further, but it is necessary to say this much to make it clear that in passing the order at which I shall arrive I in no way lose sight of the gravity of the charge or of the nature of the evidence.
>
> (*b*) The nature and the gravity of the charge.
>
> (*c*) The severity or degree of the punishment which might follow in the particular circumstances in case of a conviction.
>
> (*d*) The danger of the applicant absconding if he is released on bail.

(*e*) The character, means and standing of the applicant.
(*f*) The danger of the alleged offence being continued or repeated, assuming that the accused is guilty of having committed that offence in the past. In view of the particular circumstances of the case and the nature of the evidence as to the particular conspiracy I do not consider there is serious danger of this.
(*g*) The danger of witnesses being tampered with. In the present case the prosecution is closed.
(*h*) Opportunity to the applicant to prepare his defence.
…."

(emphasis supplied)

This has long been applied, reapplied and emphasised in the variety of situations. For instance, in ***Sanjay Chandra v. CBI***[12], where the Appellant apparently was accused of having caused loss to the state exchequer, the Court observed:

> "**21.** In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.
> **22.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will

[12] (2012) 1 SCC 40

> tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.
> **23.** Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."
>
> (emphasis supplied)

Another example is ***Dataram Singh v. State of U.P.***[13] where the Court, while dealing with an offence under Section 420 IPC, granted bail. Still further, we may refer to an older matter in ***Babu Singh v. State of U.P.***[14], wherein this Court, dealing with the question of bail in respect of persons that had originally been acquitted by the Trial Court and the State had successfully challenged the said acquittal before the High Court, held that even though this Court itself had on an earlier occasion rejected their bail, a second bail application would be maintainable, and accordingly, released them on bail in connection with a case under Section 302, IPC. Just recently, there was another instance, in ***Sahil Manoj Machare v. State of Maharashtra***[15], the Bench comprising JB Pardiwala and Vijay Bishnoi JJ., granted bail to an accused who was an undertrial on the charge of murder, on

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[13] (2018) 3 SCC 22
[14] (1978) 1 SCC 579
[15] 2026 SCC OnLine SC 810

account of the fact that he had been in pre-trial custody for more than four years.

**11.** When it comes to special statutes, however, the script is flipped. It should be clarified at this stage itself as to what is meant by special statutes. Within the realm of criminal law, various statutes have been enacted by the Legislature dealing with a particular facet of crime. For instance, the one in which the present proceedings arise, or the Prevention of Money Laundering Act, 2002[16] or Unlawful Activities Prevention Act, 1967,[17] etc. These are special laws. Each of them deals with a particular aspect of crime, and accordingly, the rigours thereof prescribe certain procedures, conditions, etc., which must be scrupulously complied with. After all, it is a well-settled position that penal statutes must be strictly construed and implemented. To facilitate a comparative understanding, let us look to the grant of bail under these statutes.

**Prevention of Money Laundering Act, 2002**

11.1 Under the PMLA, Sections 24 and 45 are relevant.

> "24. Burden of proof.-- When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused."

[16] PMLA
[17] UAPA

…

"45. Offences to be cognizable and non-bailable.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule 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:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is 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.

11.1.1 In ***Vijay Madanlal Choudhary v. Union of India***[18], a Bench of three Judges, dealt extensively with the scope, object and provisions of PMLA. It was held as follows:

> "**288.** The successive decisions of this Court dealing with analogous provision have stated that the court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The court is not required to record a positive finding that the accused had not committed an offence under the Act. The court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.
>
> ...
>
> **303.** ... The court will not weigh the evidence to find the guilt of the accused which is, of course, the work of the trial court. The court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in *Nimmagadda Prasad* [*Nimmagadda Prasad* v. *CBI*, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575] , the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.

[18] (2023) 12 SCC 1

... ... ...

> **315.** Suffice it to observe that it would be preposterous and illogical to hold that if a person applies for bail after arrest, he/she can be granted that relief only if the twin conditions are fulfilled in addition to other stipulations predicated in the 1973 Code; but another person, who is yet to be arrested in connection with the same offence of money laundering, will not be required to fulfil such twin conditions whilst considering application for grant of bail under Section 438 of the 1973 Code. <u>The relief of bail, be it in the nature of regular bail or anticipatory bail, is circumscribed by the stipulations predicated in Section 45 of the 2002 Act. The underlying principles of Section 45 of the 2002 Act would get triggered in either case before the relief of bail in connection with the offence of money laundering is taken forward</u>. Any other view would be counterproductive and defeat the purposes and objects behind the stringent provision enacted by Parliament for prevention of money laundering and to combat the menace on account of such activity which directly impacts the financial systems, including the sovereignty and integrity of the country."
>
> **(emphasis supplied)**

11.1.2 On the issue in ***Manish Sisodia v. CBI***[19]**,** a co-ordinate Bench made pertinent observations as follows**:**

> **"34.** Detention or jail before being pronounced guilty of an offence should not become punishment without trial. <u>If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious.</u> While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder,

[19] (2024) 12 SCC 691

> cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven.
>
> **35.** The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."
>
> (emphasis supplied)

11.1.3 In ***Manish Sisodia v. Enforcement Directorate***[20], another co-ordinate Bench made pertinent observations as follows**:**

> **"**52. The Court in *Javed Gulam Nabi Shaikh case* [*Javed Gulam Nabi Shaikh* v. *State of Maharashtra*, (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222] further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. <u>It is high time that the trial courts and the High Courts should recognise the principle that "bail is rule and jail is exception</u>"."
>
> (emphasis supplied)

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[20] (2024) 12 SCC 660

11.1.4. Recently, in ***Arvind Dham v. Enforcement Directorate***[21], it has been observed by Alok Aradhe J, writing for the court, that if the State or the prosecuting agency does not have the wherewithal to provide for or protect the rights under Article 21 of the Constitution of India, then it should not oppose the prayer for bail.

11.1.5. From the above reference to judgments, it is clear that while the twin conditions as mentioned in Section 45 of the PMLA, are strict and must be complied with, but at the same time, it cannot be said that by virtue of the presumption embedded in Section 24, securing an order of bail becomes well-nigh impossible when the facts and circumstances of each case are viewed from the lens of "broad probabilities" as observed in ***Vijay Madanlal*** (supra) while maintaining a distinction between a judgment of conviction/acquittal versus an order of bail, taking care not to arrive at a positive finding regarding the commission of the offence.

**Unlawful Activities Prevention Act, 1967**

11.2 Now, we move to the second special law, i.e., UAPA. Under this legislation, Section 43D is titled as 'Modified application of certain provisions of the Code', i.e., the Code of Criminal Procedure.

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[21] 2026 SCC OnLine SC 30

1973[22], and of course, now replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023[23]. It provides, among other things, as follows:-

> "43D. Modified application of certain provisions of the Code.—
>
> …
>
> (4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.
>
> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.
>
> (6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.
>
> (7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

[22] CrPC
[23] BNSS

11.2.1 It was held in ***NIA v. Zahoor Ahmad Shah Watali***[24], as follows:

> "**23.** By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and Mcoca. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, Mcoca and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "*prima facie*" true. By its very nature, the expression "*prima facie* true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "*prima facie* true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In

[24] (2019) 5 SCC 1

> any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. …"
>
> (emphasis supplied)

11.2.2 A Bench of three Judges in ***Union of India v. K.A. Najeeb***[25], speaking through Surya Kant J. (*as the learned Chief Justice presently, then was)* while dealing with a case involving the use of country made bombs as part of a larger conspiracy held that a person who was an undertrial and had been in prison for more than five years could not be further detained. It was held as follows:

> "**17.** It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

[25] (2021) 3 SCC 713

> **18.** Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.
>
> **19.** Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc."
>
> (emphasis supplied)

11.2.3. There is a line of similar cases, viz. ***Vernon v. State of Maharashtra***[26], ***Shoma Kanti Sen v. State of Maharashtra***[27], and ***Javed Gulam Nabi Shaikh v. State of Maharashtra***[28], where it has been held that, despite the stringency of Section 43-D, rights

[26] (2023) 15 SCC 56
[27] (2024) 6 SCC 591
[28] (2024) 9 SCC 813

under Article 21 would still have a large role to play in the grant of bail.

11.2.4 The recent judgment in ***Gulfisha Fatima v. State (NCT of Delhi)***[29], Aravind Kumar J. held that in special statutes such as the UAPA, when the question of bail arises, it has to be kept in mind that delay cannot be the sole ground and instead it is the starting point for heightened scrutiny by the Court where additional factors, including the gravity of the offence; the role of the accused; the strength of the *prima facie* case; the extent to which prolonged incarceration may be offensive to Article 21; extracted as follows, has to be considered:

> "**81.** The correct application of Section 43D(5), therefore, requires the Court to undertake a structured inquiry confined to the following:
>
> i. whether the prosecution material, accepted as it stands, discloses a prima facie case satisfying the statutory ingredients of the offence alleged;
>
> ii. whether the role attributed to the accused reflects a real and meaningful nexus to the unlawful activity or terrorist activity proscribed under the Act, as distinguished from mere association or peripheral presence; and
>
> iii. whether the statutory threshold is crossed qua the individual accused, without embarking upon an assessment reserved after full-fledged trial."

[29] 2026 SCC OnLine SC 10

11.2.5 In ***Syed Iftikhar Andrabi v. National Investigation Agency***[30], Ujjal Bhuyan J., while dealing with a case involving 3.2 Kgs. of heroin and a large amount of cash, observed that the holding in ***Gulfisha (supra)*** discussed above and ***Gurwinder Singh v. State of Punjab***[31] has taken a somewhat restrictive view which does not accord with ***Najeeb*** (supra). It has been held that the test as laid down in Section 43D (5) does not restrict the power of a constitutional Court to grant bail, when the liberty of the accused has been infringed for a prolonged period of time. It further held that ***Najeeb*** *(supra)* did not hold that the mere passage of time entitles an accused to bail; instead, it held that the continued application of the Section becomes "*constitutionally suspect*"[32], when incarceration begins to be unduly prolonged, and there is unlikeliness of the conclusion of the trial.

11.2.6 What can be seen from the above decisions is that while ***Watali*** *(supra)* took a strict view, subsequent judgments discussed above firmly embedded Article 21 consideration as a factor for bail. ***Gulfisha*** *(supra)* took a view that when a violation of Article 21 is

[30] 2026 SCC OnLine SC 881
[31] (2024) 5 SCC 403
[32] Para 27.11

alleged, a more careful scrutiny is to be undertaken by the Court and that, in and of itself, cannot entitle the accused to the relief of bail. However, ***Andrabi*** *(supra)* reasserted the singular application of Article 21 as being unaffected by statutory rigours in the particular scenario of prolonged incarceration and long pending trials. In view of the somewhat differing stands taken by different Benches of this Court, a reference[33] has been sought to a larger Bench of this Court to clarify the scope of bail under this statute.

**Narcotic Drugs and Psychotropic Substances Act, 1985**

11.3 We now move to the third special law, the one in which the present proceedings arise and *ergo*, the most important one for us presently, NDPS Act, 1985. Section 35 embeds the reverse presumption against the accused, and Section 37 deals with the twin conditions prescribed for grant of bail. They read, respectively, as hereinbelow:

> "35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

[33] SLP(Crl.) 2867/2026, order dated 22nd May 2026

> Explanation.—In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.
>
> (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."
>
> "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 3 [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) <u>the Public Prosecutor has been given an opportunity to oppose the application for such release, and</u>
> <u>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.</u>
> (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."
>
> (emphasis supplied)

11.3.1 In ***Union of India v. Ram Samujh***[34], a co-ordinate Bench held that the jurisdiction of the Court to grant bail is circumscribed by Section 37, and it was held that the object and intent of the statute, which was enacted to check the menace of drugs in the society, has to be followed mandatorily.

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[34] (1999) 9 SCC 429

11.3.2 A three-Judge Bench in ***Narcotics Control Bureau v. Mohit Aggarwal***[35], while discussing earlier judgment in ***Collector of Customs v. Ahmadalieva Nodira***[36] and ***State of Kerala v. Rajesh***[37], explained the meaning of the term 'reasonable grounds' as mentioned in Section 37(1)(b)(ii). It was held:

> "**14.** To sum up, the expression "reasonable grounds" used in clause (*b*) of sub-section (1) of Section 37 would mean credible and plausible grounds for the court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.
> **15.** We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the court is not required to record a finding that the accused person is not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.
> **…**
> **19.** … The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not

[35] (2022) 18 SCC 374
[36] (2004) 3 SCC 549
[37] (2020) 12 SCC 122

considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

(emphasis supplied)

11.3.3 In ***Mohd. Muslim v. State (NCT of Delhi)***[38], it has been observed that:

> "**21.** A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.
>
> **22.** The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India* v. *Rattan Mallik* [*Union of India* v. *Rattan Mallik*, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831] ). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil* [*Satender Kumar Antil* v. *CBI*, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1]..."

[38] (2023) 18 SCC 166

(emphasis supplied)

11.3.4 This Bench, through A.G.Masih. J. in the recent Order, ***State of Punjab v. Sukhwinder Singh***[39], observed that when it comes to special statutes, Article 21 considerations are to be made within the framework of the statute. The relevant extract is as follows:

> "**10.** The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(b)(ii) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that 'the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial.' Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone. The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious Constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The constitutional right under Article 21 and the special provision of law under Section 37, NDPS Act are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error."
>
> (emphasis supplied)

[39] 2026 SCC OnLine SC 671

11.3.5 Another recent instance is ***Rajadurai v. State of Tamil Nadu***[40] where this Court (J.B Pardiwala and K.V.Viswanathan JJ) granted bail to an accused in a crime involving almost 23 Kgs of *Ganja* on the ground that they had been in judicial custody for over a year and not even one witness stood examined.

11.3.6 We may once again turn to observations made in ***Najeeb*** *(supra),* as follows:

> "**19.** Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc."
>
> (emphasis supplied)

11.3.7 The conclusion that can be drawn from the above discussion is that when it comes to cases under this special law (NDPS Act 1985) and particularly involving commercial quantities,

[40] Special Leave to Appeal (Crl.) No.4729/2026

a general hesitation pervades. In complying with the twin conditions, a broad perusal of the evidence is called for, not one that dives into minutiae, or a detailed examination of all material. Article 21 considerations are deservedly at the centre, but they are not exercised independent of the statutory rigours.

**12.** A close analysis of all three statutes discussed above shows that this Court's approach has evolved differently under each statute.

12.1 Under the UAPA, an in-detail examination of the evidence at bail stage is avoided. National security, as a ground, operates in full force but even then, the majesty of Article 21 grants accused persons the right to agitate against prolonged incarceration.

12.2 The position under PMLA is slightly different. The twin conditions aren't the only factor that the Court considers during proceeding for bail; instead, adjudication may also involve looking into evidence qua financial material, the alleged proceeds of crime, and the role attributed to the accused.

12.3 The judgments rendered under the NDPS Act show that the statutory burden placed upon the accused is exceptionally high, especially in cases involving commercial quantities. As evidenced by the observations in ***Najeeb*** *(supra)* that the conditions therein are even stricter than the UAPA. At the same time, the standard under this legislation differs from UAPA cases in one important respect, unlike in the latter, where a "prima facie look" is all that is permitted, in the former the Courts do engage with issues such as recovery, conscious possession, procedural compliance, and statutory safeguards governing search and seizure. This is a well-established position, not requiring us to buttress our statement with reference to case law.

12.4 This Court has acknowledged that indefinite incarceration without trial metamorphoses the process into the punishment. And now, with the reference in ***Tasleem Ahmed v. State Govt. of NCT of Delhi***[41], having been made, the 'jury is out' on this question.

12.5 All of the special laws considered above converge in their positions on the point that they cannot become vehicles of indefinite detention. At the same time, the Court has resisted any broad constitutional dilution of statutory rigour, except when it comes to the paramountcy of Article 21, the violation of which will have to be looked at from the facts of a particular case. The scales of justice attain a peculiar balance in this way. Parliament is competent to, and accordingly does impose restrictions for extraordinary crimes

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[41] Crl.A. No. 002795 / 2026 @SLP(Crl.)2876 of 2026 in Order dated 22nd May 2026

& yet, such restrictions still answer to constitutional discipline, proportionality & personal liberty.

**Principles Regarding the Grant of Bail to Foreign Nationals**

**13.** Under all these special laws, as also under the general laws, there is always the possibility that a person who is not a citizen of this country may be the perpetrator. Well, *bail is the rule and jail is the exception* for them too. Then, what are the aspects or factors that are to be kept in mind by the Court? Let us examine this.

13.1 In ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India***,[42] certain directions were issued regarding bail in NDPS cases. Those are as follows:

> " **15.** …We, therefore, direct as under:
> (*i*) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

[42] (1994) 6 SCC 731

(*ii*) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (*i*) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.
(*iii*) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.
(*iv*) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.
The directives in clauses (*i*), (*ii*) and (*iii*) above shall be subject to the following general conditions:
(*i*) <u>The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court</u> concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;
(*ii*) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (*i*), once in a fortnight in the case of those covered under clause (*ii*) and once in a week in the case of those covered by clause (*iii*), unless leave of absence is obtained in advance from the Special Judge concerned;
(*iii*) the benefit of the direction in clauses (*ii*) and (*iii*) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;
<u>(*iv*) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the</u>

> country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;
> (*v*) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;
> (*vi*) the undertrial accused may furnish bail by depositing cash equal to the bail amount;
> (*vii*) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and
> (*viii*) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code."
>
> (emphasis supplied)

13.2 In ***Louis De Raedt v. Union of India***[43], while dealing with writ petitions by individuals who had been asked by the Government to leave the country by a specified date, despite the fact that they had been living in India and functioning as Christian missionaries for years on end, and thereby claimed rights under Article 21, it was held:

> "**13.** The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(*e*), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nurenburg* v. *Superintendent, Presidency Jail, Calcutta* [(1955) 1 SCR 1284 : AIR 1955 SC 367 :

[43] (1991) 3 SCC 554

> 1955 Cri LJ 876] that the power of the government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the executive government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice."
>
> (emphasis supplied)

13.3 ***Frank Vitus v. Narcotics Control Bureau***[44], was a case where this Court, while observing as under, set aside conditions requiring the accused to continuously share his Google location with the police, as also the condition of securing a certificate from the Embassy of their home country within a specified period of time:

> "**10.1.** We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21. The courts must show restraint while imposing bail conditions. Therefore, while granting bail, the courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law. Bail conditions cannot be so onerous as to frustrate the order of bail itself. For example, the court may impose a

[44] (2024) 8 SCC 415

condition of periodically reporting to the police station/court or not travelling abroad without prior permission. Where circumstances require, the court may impose a condition restraining an accused from entering a particular area to protect the prosecution witnesses or the victims. <u>But the court cannot impose a condition on the accused to keep the police constantly informed about his movement from one place to another.</u> The object of the bail condition <u>cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21.</u> If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy. The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail.

... ... ...

**16.** Imposing any bail condition which enables the police/investigating agency to track every movement of the accused released on bail by <u>using any technology or otherwise would undoubtedly violate the right to privacy guaranteed under Article 21.</u> In this case, the condition of dropping a pin on Google Maps has been incorporated without even considering the technical effect of dropping a pin and the relevance of the said condition as a condition of bail. This cannot be a condition of bail. The condition deserves to be deleted and ordered accordingly. In some cases, this Court may have imposed a similar condition. But in those cases, this Court was not called upon to decide the issue of the effect and legality of such a condition."

(emphasis supplied)

13.4 The Delhi High Court in ***Lambert Kroger v. Enforcement Directorate***[45] while dealing with the bail application of a German national accused under the Foreign Exchange Regulation Act 1973, which undoubtedly is a special statute, referred to the oft-repeated saying of *bail is the rule and jail is the exception*, and as such released him on bail subject to the conditions that his passport shall be deposited; he shall not leave the NCT of Delhi; and that he would report to the Enforcement Officer, every Monday at 11 am.

13.5 From the above judgments as also others, *inter alia*, ***Sartori Livio v. The State (Delhi Admin)***[46]; ***Haroub Slaum Sleyoum v. Shri Abdul Qadir***[47] the following principles emerge:

(i) Foreign nationals are entitled to protection under Article 21 of the Constitution of India;

(ii) The State has power as the sovereign to regulate, restrict and expel foreign nationals;

(iii) Merely because an accused/convict is a foreigner, the right to bail cannot be circumscribed. It is permissible to impose special conditions on them while keeping in view the right to privacy and personal liberty under Article 21.

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[45] Crl. M(M). No. 2580/99 decided on February 20, 2000/2000 SCC OnLine Del 213
[46] Bail Application No. 89 of 2005/2005 SCC OnLine Del 214
[47] Bail Application No.2520 of 2008/2009 SCC OnLine Del 333

(iv) The conditions of bail must be reasonable, proportionate and capable of compliance.

**Applying the understanding to the Present Facts and Cancellation of Bail**

**14.** Having understood the position in detail, let us come back to the case at hand. The respondent-accused had been arrested upon the statement of the co-accused Ms. Sumi. The offence in question was committed during the period when he had been released on bail by the Delhi High Court in relation to a similar offence. The custody period in relation to the instant FIR was around two and a half years. We have perused all the orders passed by the High Court of Judicature at Bombay in the bail application. The factum of proceedings before the Patiala House Court, New Delhi is conspicuously absent from the zone of consideration. All that has been said is that since there was no recovery from him, this Court's judgment in ***Tofan Singh supra*** would apply and, as such, he is entitled to the relief of bail. Arguably, the insistence on the Union of India filing its affidavit would be in partial compliance with the requirement of the prosecuting agency/prosecutor being heard, but it does not tell us how the High Court came to the conclusion that there are *'reasonable grounds for believing that he is not guilty'*. It is well established that both these conditions are required to be fulfilled and not either of them. If the two-and-a-half-year incarceration of the respondent-accused in the considered view of the High Court amounted to a violation of Article 21 rights of the foreigner (as the same is undoubtedly applicable to him), the same would have functioned as increasing the level of scrutiny of the actions of the prosecuting agency. Though begging the question, we put to ourselves, should not the Court have exercised a little amount of restraint, considering both the past conduct of the accused and the quantity of contraband involved, also factoring the person responsible for the delay, if any. In the impugned order, however, neither is there any discussion of the material presented warranting conviction, nor is there any discussion about the possibility of the respondent-accused again not committing such a crime.

**15.** There is another aspect which needs to be considered. It is a matter of record that the respondent-accused had been convicted in an NDPS case by the Patiala House Court. In that view of the matter, Section 31A of the NDPS Act would apply. It reads as under:

"31A. Death penalty for certain offences after previous conviction.—(1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under section 19, section 24, section 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,—

(a) engaging in the production, manufacture, possession, transportation, import into India, export from India or transhipment, of the narcotic drugs or psychotropic substances specified under column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance, as specified in column (2) of the said Table:

TABLE

| | Particulars of narcotic drugs/psychotropic substances | | | Quantity |
|---|---|---|---|---|
| | (1) | | (2) | |
| (i) | … | … | … | … |
| (ii) | … | … | … | … |
| (iii) | Heroin | | … | 1 Kg. |
| (iv) | … | | … | … |
| (v) | … | | … | … |
| (vi) | … | | … | … |
| (vii) | … | | … | … |
| (viii) | … | | … | … |
| (ix) | … | | … | … |
| (x) | … | | … | … |
| (xi) | … | | … | … |
| (xii) | … | | … | … |
| (xiii) | … | | … | … |
| (xiv) | … | | … | … |

(b) financing, directly or indirectly, any of the activities specified in clause (a)

> shall be punished with punishment which shall not be less than the punishment specified in section 31 or with death."

Undisputedly, the quantity of *heroin* involved in the present case is 5 Kgs (approx.) and the respondent-accused is allegedly the master mind of the crime. Whether or not he is actually so, was a matter to be determined at trial by leading proper evidence. Given that Section 31A of the NDPS Act applies at the threshold of 1kg, the death sentence is a real probability as the eventual outcome against the respondent-accused. Section 37(2) of the NDPS Act states that the restrictions put in thereby are in addition to those placed by the CrPC. As such, Section 436A of the CrPC becomes relevant. It reads as under:

> "436A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) <u>undergone detention for a period extending up to one-half of the maximum period of imprisonment specified</u> for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:
> Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:
> Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of

> imprisonment provided for the said offence under that law.
> Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."
>
> (emphasis supplied)

Section 479 of the successor legislation, which has been held to be applicable retrospectively[48], reads:

> "479. Maximum period for which under-trial prisoner can be detained.
> (1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or <u>life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law</u>, he shall be released by the Court on bail:
> Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:
> Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:
> Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.
> *Explanation.*—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.
> (2) Notwithstanding anything in sub-section *(1),* and subject to the third proviso thereof, where an

[48] Para 3 of Writ Petition (C) No. 406 of 2013

> investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.
> (3) The Superintendent of jail, where the accused person is detained, on completion of one-half or onethird of the period mentioned in sub-section *(1),* as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section *(1)* for the release of such person on bail."
> (emphasis supplied)

**16.** As is clear, even if we take a situation where the quantity with which the respondent-accused has been associated with was not so large, the sentence to be given to him would have ranged from ten to twenty years. In this case, since capital punishment was in play, the protection of Sections 436A of the CrPC/479 of the BNSS would not apply.

**17.** Considering the totality of the factual matrix, on 19th September 2025, we had stayed the operation of the impugned bail order and directed the DGPM, to take steps to arrest the respondent-accused. It is also a matter of record that despite the Look Out Notice[49] having been issued, and other steps having been taken by the concerned authorities, the respondent-accused could not be arrested. Simply put, he jumped the bail.

In these circumstances, the present appeal is no longer a petition against a grant of bail but is instead a proceeding for

[49] LON

cancellation of bail because the conditions imposed for grant of bail have been violated. Hence, the bail granted in terms of the impugned order stands cancelled.

The present case acquires great importance, for the reason that upon orders of this Court, the accused was directed to be arrested; the authorities undertook a verification of the sureties submitted on his behalf and found the same to be fake.

In the next part of our opinion, we deal with this issue.

**The Issue Regarding Sureties**

**18.** The report of the National Crimes Record Bureau as of 2023 states that 2546 crimes were committed by foreigners. The following is a table that shows the distribution of these offences by the country of origin of the accused/offender:

| Rank | Country | Total cases |
|---|---|---|
| 1 | Bangladesh | 3214 |
| 2 | Nigeria | 472 |
| 3 | Nepal | 336 |
| 4 | Myanmar | 275 |
| 5 | Other African countries | 112 |
| 6 | Sri Lanka | 134 |
| 7 | Pakistan | 56 |
| 8 | Other Asian countries | 47 |
| 9 | Other SAARC countries | 46 |

| | | |
|---|---|---|
| 10 | Russia | 24 |

In each of these cases, sureties assume an important role. They are the only link of the Court with the accused. Although we do not know the exact number of people from these 2546 cases who have been arrested and/or released on bail, we do know that at least 47 other persons are in similar situations, as per a statement made at the bar, as the respondent accused i.e., they are absconding, and the sureties furnished by them are fake.

The following tables show the number of foreign nationals arrested in drug cases by drug law enforcement agencies between 2020-2024; the number of cases registered under NDPS against foreign nationals during this time; the total quantum of drugs seized in India during 2021 to 2025[50]; and seizure of *heroin* during 2021 to 2024:

| **FOREIGN NATIONALS ARRESTED IN DRUG CASES (BY DLEAs)** | | | | | |
|---|---|---|---|---|---|
| **Nationality** | **2024**[51] | **2023**[52] | **2022**[53] | **2021**[54] | **2020**[55] |

[50] https://www.pib.gov.in/PressReleasePage.aspx?PRID=2223093&reg=48&lang=2
[51] https://narcoordindia.gov.in/narcoordindia/Periodicals/1758191182-4293-DOC-ncb-annual-report-2024.pdf
[52] https://narcoordindia.gov.in/narcoordindia/Periodicals/1732276895-3313-DOC-ncb-annual-report-2023-24.pdf
[53] https://narcoordindia.gov.in/narcoordindia/Periodicals/1732276799-6003-DOC-ar2022.pdf
[54] https://narcoordindia.gov.in/narcoordindia/Periodicals/1661948610-1548-DOC-annual%20report%202021.pdf
[55] https://narcoordindia.gov.in/narcoordindia/Periodicals/1656248257-6886-DOC-2020.pdf

| | | | | | |
|---|---|---|---|---|---|
| Bangladesh | 18 | 24 | 63 | - | 2 |
| Nigeria | 106 | 144 | 139 | 87 | 38 |
| Nepal | 203 | 284 | 175 | 115 | 57 |
| Myanmar | 25 | 62 | 45 | 22 | 21 |
| Sri Lanka | No data found | No data found | 2 | 17 | 11 |
| Pakistan | No data found | 4 | 14 | 10 | 5 |
| Russia | No data found | 5 | 4 | 1 | 8 |

| **CASES AGAINST FOREIGN NATIONALS REGISTERED UNDER NDPS ACT BETWEEN 2020-2024** | | | | | |
|---|---|---|---|---|---|
| **Nationality** | **2024**[56] | **2023**[57] | **2022**[58] | **2021**[59] | **2020**[60] |
| Bangladesh | 19 | 17 | 2 | 6 | 16 |
| Nigeria | 259 | 260 | 294 | 245 | 136 |
| Nepal | 129 | 51 | 52 | 82 | 33 |
| Myanmar | 58 | 9 | 37 | 9 | 5 |
| Other African Countries | 50 | 58 | 72 | 81 | 33 |
| Sri Lanka | 4 | 3 | 7 | 4 | 3 |
| Pakistan | 0 | 2 | 0 | 0 | 0 |
| Other Asian countries | 6 | 4 | 4 | 3 | 6 |
| Other SAARC countries | 0 | 3 | 0 | 0 | 0 |
| Russia | 6 | 3 | 7 | 2 | 11 |

| **QUANTITY OF DRUGS SEIZED IN PAST 5 YEARS** | | | |
|---|---|---|---|
| **S.NO.** | **Year** | **Quantity (in Kg)** | **Value (in Crores)** |
| **1.** | 2021 | 16,09,612 | 25,241 |
| **2.** | 2022 | 12,53,662 | 19,922 |
| **3.** | 2023 | 13,89,725 | 17,179 |
| **4.** | 2024 | 13,30,600 | 27,525 |

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56 https://www.ncrb.gov.in/uploads/files/3CrimeinIndia2024-VolumeIII1.pdf
57 https://www.ncrb.gov.in/uploads/files/3CrimeinIndia2023PartIII2.pdf
58 https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/ciiyearwise2022/1701608543CrimeinIndia2022Book3.pdf
59 https://www.ncrb.gov.in/uploads/files/CII-2021Volume3.pdf
60 https://www.ncrb.gov.in/uploads/files/CII-2020Volume3.pdf

| | | | |
|---|---|---|---|
| **5.** | 2025 (upto Nov.) | 11,85,994 | 16,927[61] |

| SEIZURES UNDER NDPS ACT OF HEROIN | |
|---|---|
| **Year** | **Quantity (in Kilogram)** |
| 2020[62] | 1782.606 |
| 2021[63] | 2415.352 |
| 2022[64] | 4335.494 |
| 2023[65] | 4159.380 |
| 2024[66] | 2954.772 |

**19.** Given that in this case, sureties were produced, allegedly verified and accordingly the respondent-accused was released, but later it was found that sureties were in fact fake; the purpose of producing sureties, i.e., people who shall be able to secure the presence of the accused in the event that the same is required, is itself rendered naught- the Court cannot ignore the grave possibilities that may arise in cases where this issue is left unaddressed. We may note that, in 2021, a Bench comprising Hemant Gupta and V. Ramasubramanian JJ, had, while dismissing a special leave petition for the grant of bail[67], taken judicial notice of the issue of false sureties in the following terms: –

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[61] https://www.pib.gov.in/PressReleasePage.aspx?PRID=2223093&reg=48&lang=2
[62] https://www.ncrb.gov.in/uploads/files/table-20B3-2020.pdf
[63] https://www.ncrb.gov.in/uploads/files/table-20B3-2021.pdf
[64]https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1702034643TABLE20B3.pdf
[65] https://www.ncrb.gov.in/uploads/files/TABLE20B3.pdf
[66] https://www.ncrb.gov.in/uploads/files/TABLE20B31.pdf
[67] SLP (Crl) No. 4116/2021

> "The problem of impersonation of sureties is rampant in at least some States. We understand that there is a surety module software prepared by National Informatics Center in the Case Information Module for the Sub-ordinate Courts in India. But there is still no mechanism with the courts to verify the genuineness of the surety. Therefore, we deem it appropriate to issue notice to the Central Government and to the Unique Identification Authority of India (UIDAI) Bangla Sahib Road, behind Kali Mandir, Gole Market, New Delhi 110001 as to find out possibility of mechanism for verification of the surety by the judicial officers for its authentication as part of good governance. The desirability of issuing notice to the States and Union Territories shall be decided on the basis of response from the Union/ UIDAI. The matter regarding verification of the surety be placed before the Hon'ble Chief Justice for constitution of an appropriate Bench as deemed appropriate."

Consequent thereto, Suo Moto Writ Petition (Crl) No. 1 of 2021 came to be registered, however, that appears to have remained pending without the needle having moved forward in any manner.

**Factual Matrix : Non-existence of Sureties**

**20.** Turning our attention back to the present case, once the issue of fake sureties having been furnished came to light, we were of the considered view that it is essential to go to the root of the matter, not only here but also otherwise, for if the very persons responsible for ensuring the accused's presence before the concerned Court are fictitious, the process of criminal justice grinds to a halt, for now there is no accused against whom the trial can proceed. What transpired further is captured as under:

20.1 The Union of India, in its affidavit dated 13th November 2025 indicating compliance of our orders, submitted that:

a. The accused was not traceable;

b. The address of the surety, namely Sushil Balkrushna Jadhav, was fake and residents of the area were not aware of any such person associated with the address;

c. The purported employer of the surety submitted that no such person had ever been employed at their office;

d. The bank account furnished by the surety and the corresponding branch to which it belonged were incorrect. No account was with the bank under the name of the surety;

e. The PAN card and Aadhaar card of the surety were found to be forged;

f. Application was made to the concerned Trial Court on 12th November 2025 for forfeiture of surety bond and issuance of Non-Bailable Warrant against the surety.

20.2 The report of the Special Judge (NDPS) dated 21st November 2025, which was called *vide* order dated 18th November 2025, reveals that Sushil Balkrushna Jadhav, the surety for the respondent-accused, was apparently produced before the Court and identified by Ms. Nasima Danish Battiwala, Advocate He had stated that he knew the respondent-accused for the past six years. Further, it was submitted that the City Civil and Sessions Court, Greater Mumbai, has a dedicated department for the verification of sureties. The said department had placed the documents before the deponent, and he had also personally interacted with the surety before issuing formal acceptance. In other words, all statutory requirements were met. The fact that the details were fake came to light only later, and once the bail order had been stayed, NBWs were issued against the accused as also notice was issued to the surety.

20.3 On 17th December 2025, notice was issued by this Court to Ms. Nasima Danish Battiwala, Advocate (Respondent No. 4). She has filed two affidavits, the *first* on 13th January 2026 and the *second* on 20th January 2026. In the *first* affidavit, she has made submissions regarding the process of verification of sureties as was being followed in the concerned Court. She has submitted that after the concerned Registrar of the Court verifies the documents, the same are placed before the concerned Judge, who would then interview the surety and, only upon being satisfied, pass an order.

It is also submitted that in the last few years the Courts have stopped insisting on police verification of the surety and the accused regarding the addresses and the verification report for the solvency of the surety. Insofar as her role in the present case is concerned, all that she says is that Shri Sushil Balkrushna Jadhav, brought the respondent(s)-accused to her, stating that he would stand surety for the latter and the necessary papers were to be filed. She had only this much to do with the case. The second affidavit was limited to filing relevant documents that govern the verification of sureties.

20.4 Considering the issue as also the very real possibility of similar circumstances arising in other cases, we thought it fit to examine the processes for verification of sureties as prevalent in States other than Maharashtra, as well. Accordingly, the learned standing counsel for the States and the High Courts were requested to file the relevant information. Such information was supplied to the Court. The same was perused and considered. A large number of commonalities could be deduced from the procedures adopted across the States. The following table that captures the procedure in some States, which is over and above the common aspects across the States:

| SURETY VERIFICATION | | |
|---|---|---|
| **S.NO.** | **STATE / UT** | **DETAILS** |
| 1. | **BOMBAY HIGH COURT (ALL JURISDICTIONS)** | SURETY VERIFICATION APPLICATION (Police Verification "P.V.")<br>• Verified following documents<br>• P.V. Report dated +Ve by. Police Station -Ve Partly +Ve about surety.<br>• P.V. Report dated by. Police Station -Ve +Ve Partly +Ve about accused.<br>• R.C. No.<br>• Electricity Bill/Telephone Bill<br>• Aadhar No<br>• PAN Card No.<br>• Electoral Card No.<br>• Passport No. Valid till<br>• Bank Passbook/statement of Bank bearing A/c. "No." showing balance of Rs. as on<br>• Income tax return<br>• Solvency certificate<br>• Affidavit of income<br>REMAND APPLICATION<br>• Full name<br>• Qualification<br>• Residence address<br>• Period for surety has been residing at the above address<br>Occupation / business details:-<br>Address / Nature / Rent<br>• Employer details:<br>• Particulars of house property owned<br>• Income tax paid in 3 years<br>• Bank account and remaining balance<br>• Length of time surety has known accused<br>• Prior surety engagements<br>• Surety bond forfeited?<br>• Whether any application of surety rejected earlier<br>• Surety involved in any litigation or accused in any case. |
| 2. | **RAJASTHAN HIGH COURT** | Rule 11 of Order 35 (general provisions regarding inquiries and trials in criminal courts) of the 2018 Rules provides:<br>"11. Surety to submit ID proof-<br>(a) The surety shall submit an affidavit while affixing upon it a latest coloured photograph |

| | | |
|---|---|---|
| | | of himself/herself and besides information about his/her financial capacity. The information on the following points must be verified on oath:-<br>(i) How and since when he knows the person for whom he is standing as surety.<br>(ii) Whether and in how many cases, he has furnished surety.<br>(iii) His permanent and present residential address.<br>(iv) Whether, the person for whom he is furnishing surety in bail or somebody on his behalf has paid him or agreed to pay any gratification in any manner." |
| 3. | **ORRISA HIGH COURT / STATE OF ORRISA** | Form (M) 83 – A<br>• Occupation or business:-<br>• Name & address of the employer if the Surety is in services:-<br>• Full Particulars of house property owned,<br>• Banking accounts, if any:- Amounts now lying in each banking account:-<br>• Length of time for which the Surety has known the Accused personally:-<br>• Whether the Surety is related to the accused; if so how?<br>• Whether the Surety has stood has surety for any other person in the preceding six months.<br>• Whether, at any time, surety bond forfeited. If so, give particulars:-<br>• Whether, at any Time, application for surety ship which was rejected; if so, give the particulars thereof:-<br>• Whether the surety is involved in any litigation or accused in any case :-<br>• Any particulars in regard to the status of the surety, or his income and assets which the surety may desire to give:<br>Surety details in – (M) 83, (M) 83 A, (M) 84, (M) 85<br>• Name of surety<br>• Name of accused<br>• Case details assuring accused's presence on court's direction |

| | | |
|---|---|---|
| | | • Forfeit money in non-compliance of court's order. |
| 4. | **STATE OF KERALA / HIGH COURT OF KERALA** | • Ensure authenticity and accountability of sureties.<br>• He or she is not acting as a habitual or professional surety and that the particulars furnished are genuine may be incorporated in the format.<br>• Verification of identity and residence through official identification documents<br>• E-Courts platform may significantly enhance compliance monitoring. Electronic transmission of bail orders and conditions to the jurisdictional police station and investigating officer<br>• Challenges, cases involving foreign nationals, particularly with respect to identity verification, availability of local sureties and ensuring continued presence within the jurisdiction of the court.<br>• Safeguards including surrender of passport, restriction on international travel without permission of the court and mandatory intimation to immigration or FRRO authorities.<br>• In suitable cases and subject to judicial discretion, verification or assurance from the concerned Embassy or Consulate of the accused's country may also be considered as a supplementary safeguard, where conventional local sureties are difficult to obtain.<br>• Courts may also consider requiring periodic reporting before the jurisdictional police station or investigating officer in such cases. |
| 5. | **FOR STATE OF BIHAR / HC OF PATNA** | PETITION UNDER SECTION 441 CR. P.C./485 OF BNSS<br>• Stand as surety to the above named accused to the extent of Rs.______<br>• Surety hereby submitting : as surety document for his property/ FDR bearing No. dt.<br>• Issued by ___________ of Rs. ___________ Only<br>• That the said property/ FDR is free from all charges, mortgages and lieu etc |

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| 6. | **HIGH COURT OF HIMACHAL PRADESH** | High Court of Himachal Pradesh in Criminal Appeal No. 39 of 2011, titled as Panne Lal versus State, vide order dated 30.09.2011 had issued the following directions:<br><br>"i) Whenever an accused is produced before the Court(s), there shall be a, photograph of the accused, which shall be affixed in the records Saja Slip and the photograph shall be attested by the Magistrate at the time of production of the accused.<br>ii) As far as sureties are concerned, in their cases also (1) photos of the persons identified should form part of the records. In the NDPS cases, where foreign nationals are involved, as cautioned by the Apex Court, the Court(s) should be circumspect in granting bails and even if bails are to be granted also, stringent conditions should be imposed with a (2) minimum of two solvent sureties and the bonds of the sureties should be for substantial amounts. Though it may not be proper for this Court to give any indication as to what should be the substantial amount, in view of the changing economic conditions, we are of the view that (3) each surety should be having solvency to the tune of rupees fifty lacs, where commercial quantity is involved, and in all other cases, except the (4) small quantity the solvency should be of a minimum amount of rupees five lacs and in small quantity, the bond shall be for a (5) minimum amount of rupees one lac for each surety. In order to ascertain solvency, the trial Court(s) may look into the (6) revenue papers with respect to title, ownership or any other proof with regard to their solvency<br>(iii) Wherever (7) Unique Identity Proof Cards (Aadhar Cards) have been issued, the identification by the said UIPC shall be-insisted by the Courts and police officers/officials. The learned trial Court |

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| | | shall insist for identification of the accused whenever they are directed to be present in Court(s)"<br><br>Further the Courts are also required to adhere to the directions given by the Supreme Court in Thana Singh versus Central Bureau of Narcotics (Cr. Appeal No. 1640 of 2010) decided on 23.01 2013 ((2013) 2 SCC 590) which can also be accessed on the website of the H.P. Judicial Academy, i.e. www.hpsja.nic.in,<br><br>It has been observed by the High Court time and again that the directions issued in Panne Lal's case (supra) are not being complied with. Against the aforesaid background, I have, therefore, been directed to impress upon all the judicial officers to comply with the provisions of Sections 437 A and 441 A of the Code as well as the above directions in Panne Lal's case (supra) and also Thana Singh versus Central Bureau of Narcotics (supra) without fail and the particulars of accused and surety taken under Section 437 A Cr. P.C be entered in the footnote of Form-B of the final judgment. Non-compliance of these directions shall be strictly viewed and may entail disciplinary action against the erring judicial officer(s) which may adversely affect his/her judicial career. |
| 7. | **U.T. OF ANDAMAN AND NICOBAR ISLANDS** | <u>Affidavit</u><br>affirm as follows:-<br>1. That I own and posses' movable and immovable properties worth Rs________ situated at ________<br>2. That I am government servant, and I am drawing a Gross salary of Rs _________ per month.<br>3. That there is no criminal case is pending against me in any court of Law.<br>This is true to my knowledge and belief. |

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| 8. | **NATIONAL CAPITAL TERRITORY OF DELHI/ HIGH COURT OF DELHI** | Bail Bond/ Affidavit<br>• Affirmed and declared as under__<br>• Ration card number<br>• Election card number<br>• Position and place of employment<br>• T/C Number<br>• Income<br>• Value of household articles<br>• Immovable property number, bearing number with measurements, location of property and evaluation of property<br>• Undertaking for appearance before the court<br>• F.D.R. Number, issued by and evaluation<br>• Vehicle number<br>• R/c number with evaluation of vehicle |
| 9. | **AFFIDAVIT ON BEHALF OF UOI** | Ministry of Electronics and Information Technology<br>• That National Informatics Centre (NIC) has provided the facility to (only) enter surety details as part of the Case Information System (CIS) which is implemented in District and Taluka courts, across the country. It is stated that CIS has been developed under the guidance and directions of eCommittee, Supreme Court of India.<br>• That it is pertinent to mention that CIS is being managed by Ministry of Law and Justice (Department of Justice) and has been implemented by NIC.<br>• That, it is hence submitted that Ministry of Law and Justice (Department of Justice) being the appropriate Ministry, may be impleaded for a resolution of the issue at hand, since NIC is only the implementing agency and Department of Justice under the aegis of Ministry of Law and Justice is the appropriate authority for taking a policy decision concerning any addition of features in the Case Information System.<br>• That, Surety application to be checked by Assistant Registrar of Sessions Department.<br>• Sessions Registrar/Additional Registrar endorsement “Submitted to the Hon’ble Court for necessary Orders and directions”.<br>• The Sheristedars to put up the said applications received from Sessions |

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| | | Department before the Presiding Officer for Orders.<br>• That, Sheristedar to make noting in the roznama about the order of the Presiding Officer of acceptance or rejection of surety and send back the Record & Proceeding to the Sessions Department for preparing Bonds and Letters.<br>• That, Sheristedars to place before Presiding Officer P.R.Bond; Surety Bond, Justification form and endorsement on Ration Card for signature, thereafter to send back the Record and Proceeding to the Sessions Department. |

**21.** Well, be that as it may. Let us begin at the beginning. How the concept of sureties has been considered, judicially or otherwise, is something which we must consider.

In ***Moti Ram v. State of M.P.***[68] this Court, speaking through V.R. Krishna Iyer J., discussed sureties and particularly professional sureties in the following terms:

> "**16.** Coming to studies made in India by knowledgeable Committees we find the same connotation of bail as including release on one's own bond being treated as implicit in the provisions of the Code of Criminal Procedure. The Gujarat Committee [ Report of the Legal Aid Committee appointed by the Government of Gujarat, 1971 and headed by then Chief Justice of the State, Mr Justice P.N. Bhagwati, p. 185] from which we quote extensively, dealt with this matter in depth:
>
> > "The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of

[68] (1978) 4 SCC 47

financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, *the bail system causes discrimination against the poor* since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for *a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount.*" *(emphasis added)*

**17.** The vice of the system is brought out in the Report:

"The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences, namely: (1) though presumed innocent he is subjected to the psychological and physical deprivations of jail life; (2) he loses his job, if he has one, and is deprived of an opportunity to work to support himself and his family with the result that burden of his detention falls heavily on the innocent members of the family, (3) he is prevented from contributing to the preparation of his defence; and (4) the public exchequer has to bear the cost of maintaining him in the jail. [ Report of the Legal Aid Committee appointed by the Government of

> Gujarat, 1971 and headed by then Chief Justice of the State, Mr Justice P.N. Bhagwati, p. 185] "
>
> …

> **19.** A latter Committee with Judges, lawyers, members of Parliament and other legal experts, came to the same conclusion and proceeded on the assumption that release on bail included release on the accused's own bond:
>
> "... We think that a liberal policy of conditional release without monetary sureties or financial security and release on one's own recognizance with punishment provided for violation will go a long way to reform the bail system and help the weaker and poorer sections of the community to get equal justice under law. Conditional release may take the form of entrusting the accused to the care of his relatives or releasing him on supervision. The court or the authority granting bail may have to use the discretion judiciously. When the accused is too poor to find sureties, there will be no point in insisting on his furnishing bail with sureties, as it will only compel him to be in custody with the consequent handicaps in making his defence. [ Report of the Expert Committee on Legal Aid —Processual Justice to the People, May 1973] ""

21.1 Three decades ago, the Law Commission of India, in its 154th Law Commission Report[69], under the chairmanship of K. Jayachandra Reddy, J. noted the problem of fake sureties as follows:

> "SURETIES
>
> **19.1** The bail procedure is becoming a shame in courts with the accused in criminal cases absconding after arranging fake sureties on fake identities and address.

[69] https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080878-1.pdf

Accordingly the procedure of securing release on the basis of forged documents has become easy.

**19.2** In Delhi the practice seems to be that when the court allows accused's release on bail after a local person is willing to stand surety, the guarantor has to produce documents to the Court to prove his domicile and solvency. This is done by producing a ration card or a passport. In addition, a power-of-attorney attested by a Notary Public, a motor vehicle registration document, a bank fixed deposit receipt or a certificate from the Income Tax Department is required to be submitted to authenticate the guarantor's solvency.

**19.3** There are touts operating in the Court permises, who help out, on a price tag, those accused who scheme to obtain bail with the idea of absconding. These touts give surety on the basis of fake identity. They operate with numerous fake ration cards which substantiate their domicile in Delhi each in a different name and address. A back dated stamp paper is procured on which details regarding the power-of-attorney of the guarantor's property in Delhi are stated and is attested by a Notary Public. They also have in their possession fake letterheads of private organisations, fake identity cards of themselves as government servants and fake motor vehicle registration papers. The touts have to be paid 20% to 30% of the surety amount before the presentation of the surety.

**19.4** Clause 44 of the Code of Criminal Procedure (Amendment) Bill seeks to incorporate a new section, S. 441A to deal with the abuse of professional and fake sureties which reads as under:
Every person standing surety to an accused person for his release on bail,
shall make a declaration before the court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

**19.5** We are of the view that section 441A be incorporated in the Code to eliminate the pernicious evil of professional and fake sureties in the eliminate the pernicious evil of professional and fake sureties in the bail process. It will eliminate collusion between professional sureties, administrators of criminal justice system and criminals.

**20.1** S. 446 of the Code prescribes the procedure for forfeiture of bonds either for appearance or production of property. Before forfeiting the surety bond, the court should give notice to surety to show cause as to why the surety bond be not forfeited. Once a hearing is given to the surety and the court is satisfied that the bond is forfeited, it shall record the grounds of such proof and call upon the surety to pay the penalty.

**20.2** Sub-section 3 of section 446 empowers the court, at its discretion, to remit any portion of the penalty and enforce payment in part only. It has been held by various decisions of the High Courts that a case for the exercise of discretion under this sub-section will arise in cases where the accused has been subsequently arrested or the amount forfeited is excessive and the surety is unable to pay. It is also not irrelevant to consider whether the surety did not act irresponsibly and there was no connivance or negligence on the part of the surety.

**20.3** Clause 45 of the Code of Criminal Procedure (Amendment) Bill seeks to amend sub-section (3) to provide that the court shall record reasons before reducing the penalty.

**20.4** The proposed amendment is as follows:

In section 446 of the principal Act, for the words "at its discretion", the words "after recording its reasons for doing so" shall be substituted.

**20.5** We are of the view that in keeping with the tune of amendments to section 436, 437. 438 and the insertion of sections 436A and 441A, the amendment of sub-section (3) of section 446 on the lines set out above to require rigorous exercise of discretion by the Courts by recording reasons prior to the reduction of penalty and enforcement in part, is proper and warranted.**”**

The 268th Law Commission Report also dealt with the aspect of sureties.

**Indian Statutory Position and Comparative International Perspective**

21.2 The statutory provisions dealing with bail, sureties etc., are as follows:

| Chapter XXXIII CrPC | Chapter XXXIV BNSS |
|---|---|
| **436.** In what cases bail to be taken.<br>**436A**. Maximum period for which an undertrial prisoner can be detained.<br>**437.** When bail may be taken in case of non-bailable offence.<br>**437A**. Bail to require accused to appear before next appellate Court.<br>**438.** Direction for grant of bail to person apprehending arrest.<br>**439.** Special powers of High Court or Court of Session regarding bail.<br>**440.** Amount of bond and reduction thereof.<br>**441**. Bond of accused and sureties.<br>**441A.** Declaration by sureties.<br>**442**. Discharge from custody.<br>**443.** Power to order sufficient bail when that first taken is insufficient.<br>**444**. Discharge of sureties.<br>**445.** Deposit instead of recognizance.<br>**446**. Procedure when bond has been forfeited.<br>**446A.** Cancellation of bond and bail bond.<br>**447**. Procedure in case of insolvency of death of surety or when a bond is forfeited.<br>**448**. Bond required from minor.<br>**449**. Appeal from orders under section 446.<br>**450**. Power to direct levy of amount due on certain recognizances | **479.** Bail and bond<br>**480.** In what cases bail to be taken.<br>**481.** Maximum period for which an undertrial prisoner can be detained.<br>**482**. When bail may be taken in case of non-bailable offence.<br>**483**. Bail to require accused to appear before next appellate Court.<br>**484**. Direction for grant of bail to person apprehending arrest.<br>**485**. Special powers of High Court or Court of Session regarding bail.<br>**486**. Amount of bond and reduction thereof.<br>**487**. Bond of accused and sureties.<br>**488.** Declaration by sureties.<br>**489**. Discharge from custody.<br>**490**. Power to order sufficient bail when that first taken is insufficient.<br>**491**. Discharge of sureties.<br>**492**. Deposit instead of recognizance.<br>**493**. Procedure when bond has been forfeited.<br>**494**. Cancellation of bond and bail bond.<br>**495.** Procedure in case of insolvency of death of surety or when a bond is forfeited.<br>**496**. Bond required from minor.<br>**497**. Appeal from orders under section 446.<br>**498.** Power to direct levy of amount due on certain recognizances. |

21.3 Having understood the system in India briefly, we may also draw from a comparative international perspective.

21.3.1 In the **United States** for example, there are four systems: ***(i)*** personal recognition and unsecured bond, where pre-trial release does not involve furnishing of any financial bond[70]; ***(ii)*** conditional release, on agreement to participate in supervision programme which may include electronic monitoring or reporting to law enforcement agents as per a decided schedule[71]; ***(iii)*** deposit bond in Court, where 10% of the total bail amount is deposited before the Court and the same is refunded after the disposition of the case[72]; and (***iv***) Bondsman system, in this, a professional bail bondsman furnishes the bail amount before the Court and undertakes to ensure the accused's presence whenever he is required in Court in exchange of a fee that is charged to the accused. In order to reduce/rule out fake sureties, the Federal Acquisition Regulations mandate that surety must pledge assets unencumbered in nature, that equals or surpasses the bond's sum. Sureties are also required

[70] https://www.justice.gov/archives/jm/criminal-resource-manual-26-release-and-detention-pending-judicial-proceedings-18-usc-3141-et
[71] https://www.justice.gov/archives/jm/criminal-resource-manual-26-release-and-detention-pending-judicial-proceedings-18-usc-3141-et
[72] https://bjs.ojp.gov/taxonomy/term/bail

to submit real estate tax assessments and certified copies of municipal or county tax/receipts as applicable[73].

21.3.2 In **Canada**, the Court releasing an accused on bail on the basis of a surety undertakes surety verification hearings where the surety is questioned on their relationship with the accused, financial and employment status etc.[74]

21.3.3 In the **Republic of Singapore**, the requirements for a particular person to be a surety, or, in their words, *bailor,* are clearly laid out as follows[75]:

> - "A Singapore citizen or permanent resident.
> - 21 years and above.
> - Not a declared bankrupt.
> - Not facing criminal charges.
> - Not an active bailer in other court matters.
> - Physically, mentally, and financially fit to accept bailor duties.
> - Prepared to accept bailor duties until the accused's case is over.
> - Able to pledge security in cash or in personal properties for the bail amount ordered by the court until the accused's case concludes."

[73] https://delcode.delaware.gov/title18/title18.pdf https://law.justia.com/codes/california/code-ins/division-1/part-2/chapter-7/article-1/section-1802/, https://law.justia.com/codes/california/code-pen/part-2/title-10/chapter-1/article-1/section-1276/
[74] https://laws-lois.justice.gc.ca/PDF/C-46.pdf
[75] Bailor eligibility and duties https://www.judiciary.gov.sg/criminal/bail#:~:text=In%20general%2C%20a%20bailor%20should,who%20can%20be%20a%20bailor.

It is also provided that even if a person fulfils all the above criteria, the courts retain discretion on appointing bailors. The Criminal Procedure Code 2010[76] provides specifically the duties of a surety as follows:

> "Duties of surety
> 104. A surety must —
> (*a*) ensure that the released person surrenders to custody, or makes himself or herself available for investigations or attends court on the day and at the time and place appointed for him or her to do so;
> (*b*) keep in daily communication with the released person and lodge a police report within 24 hours of losing contact with him or her; and
> (*c*) ensure that the released person is within Singapore unless the released person has been permitted by the police officer mentioned in section 92 or 93 (as the case may be) or the court to leave Singapore."

21.3.4 In **Australia,** the law regarding bail is state-specific. For instance, in the State of Queensland the relevant statute is the Bail Act, 1980. Part 3 thereof, deals with 'Undertakings and Sureties'. Section 20 deals in some detail about what an undertaking is, who is to furnish it, and how. Section 21 concerns sureties and lays down criteria to be met by a person, the affidavit to be furnished, the requirement of a judge's satisfaction regarding the surety and the affidavit so furnished, etc. The statute under Section 24 imposes a duty on the surety to produce the defendant (accused/convict as

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[76] https://sso.agc.gov.sg/Act/CPC2010

defined under Section 6 thereof) before the concerned court if at any time he apprehends him at a time prior to the stipulated surrender, and then seek discharge of his duties. The section is as follows:

> "24 Apprehension of defendant by surety
> (1) Where a defendant has been released on bail to appear before a court, a surety for the bail may, at any time before the defendant is required to appear and surrender into custody in accordance with this Act, apprehend the defendant and bring the defendant before the court before which the defendant is required to appear or a justice.
> (1A) A police officer shall, if required by the surety to do so, assist the surety in the apprehension.
> (2) The court or justice may, upon the appearance of the defendant before the court or justice, order that the liability of the surety be discharged and may call upon the defendant to furnish another surety in the same amount and, if the defendant fails to do so, may commit the defendant to prison.
> (3) A defendant committed to prison following the defendant's appearance pursuant to subsection (2) may apply to the court before which the defendant was required to appear or any other court to be granted bail again and the court—
> (a) may refuse the application; or
> (b) may grant the application and make such order with respect to the number of sureties (if any) and the amount and conditions of bail as it thinks proper in the circumstances."

Having appreciated the concept of sureties and some basic facts about how the institutional sureties are used in other countries, we now move to the considerations put forth by the parties in this regard.

**Inputs by the Amicus Curiae, Agencies and the Appellant**

21.4 One of the aspects that the learned *amicus curiae* has dealt with *in extenso*, is the suggestions made by the DRI regarding sureties. We have perused the same. Written submissions filed by the Union of India on 15th December 2025 reveal that they are substantially similar to the recommendations of the DRI noted above.

21.5 We find that at least two High Courts, i.e. the High Court of Punjab and Haryana at Chandigarh and the High Court of Delhi, have dealt with the question of fake/false sureties. Let us also take note of those orders:

21.5.1 A learned Single Judge of the Punjab and Haryana High Court in ***Sharanjit Singh @ Suraj v. State of Punjab***[77] issued certain directions to the State in connection with the use of the Aadhaar Card:

> "15. In view thereof, this Court considers to issue the following directions:
>
> (i)The appropriate Authorities i.e. the Secretaries of e-Governance Department of State of Punjab, State of Haryana as well as Union Territory, Chandigarh shall make appropriate application under Rule 4 of the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 to the Secretary Ministry

[77] CRM-M 49429 of 2023

of Electronics and IT in the prescribed form requesting for Aadhaar Authentication Services in all the Court premises situated in their respective States/U.T. within 30 days from the date of receipt of certified copy of this order.

(ii) The said application once received by the Secretary, Ministry of Electronics and IT, shall be considered favourably within a further period of 30 days. The necessary equipment to be provided to the Courts in terms of the applicable scheme with applicable contribution by the State and the Central Government will be provided within a further period of 30 days. Entire system shall be made operational including implementation of software and hardware within a period of 4 months from the date of receipt of certified copy of this order.

(iii)That the infrastructure for bio-metric verification of the Aadhaar Card at the Court premises shall be provided by the NIC, with the technical assistance of UIDAI.

ONCE THE INFRASTRUCTURE IS IN PLACE:

(iv) The Courts while accepting surety shall insist for complete details and identity document of surety including Aadhaar Card. Consent of the surety shall be obtained for verification of Aadhaar Card.

(v)The Magistrate concerned i.e. the Magistrate having jurisdiction over the local areas within the limits of the concerned station shall verify the Aadhaar Card of the accused in the case of personal bond and the Aadhaar Cards of the sureties as well in the case of surety bonds.

(vi) For first time accused facing prosecution qua offences punishable with imprisonment of less than 7 years under the Indian Penal Code, the Courts shall comply with guidelines issued by Supreme Court in Hussainara Khotoon's case ibid and shall not insist on sureties if parameters laid down in Para 4 of the said judgment are fulfilled on inquiry/verification of Aadhaar number of the accused.

(vii) The Periphery Surety Module which was planned with the provision of not only integration of Aadhaar which authenticates and identifies individual Aadhaar number holder but also immoveable property details which are tendered as surety by the party in the case, shall be fully implemented and utilized optimally. Whenever a

> person is to stand as surety the same shall be cross-checked with the database to satisfy w.r.t. the provisions of Section 441A of 1973 Code.
> (viii) The Principal District Judge and the Chief Judicial Magistrates shall inspect the register of Sureties periodically, preferably after every three months.
> (ix) Registrar General, Punjab & Haryana High Court is directed to issue necessary circulars to all the Courts in the States of Punjab, Haryana and U.T., Chandigarh. Necessary Rules be also framed in this respect, in the meantime, if so required."

21.5.2 The High Court of Delhi in ***Sunil Tyagi v. State (NCT of Delhi)***[78], while dealing with the issue of proclaimed offenders, issued certain directions, some of which would apply to sureties also. We have perused the same and taken them into consideration.

21.6 We have also perused the affidavit on behalf of UIDAI originally filed in Suo Motu Writ Petition (Crl) No.1 of 2021. The stand of UIDAI opposes, in a sense, the use of Aadhaar authentication. The same is permitted only for three purposes i.e., ***(i)*** preventing leakage of public funds; ***(ii)*** promoting ease of living for residents; and ***(iii)*** enabling better access to ***(a)*** digital platforms for good governance; ***(b)*** social welfare benefits; and ***(c)*** innovation and spread of knowledge. If the Aadhaar authentication process is

[78] (2021) 4 HCC (Del) 723

to be applied for the purpose of surety verification, an application would be required to be made to MeitY, Government of India as per the Aadhaar Authentication for good governance (Social Welfare, Innovation, Knowledge) Rules 2020, which would then be considered independently.

21.7 In addition to what we have discussed in the foregoing paragraphs, the *amicus curiae* has made a number of recommendations/suggestions. They are, *inter alia,* as follows:

21.7.1 With reference to the 268th Report of the Law Commission of India, a suggestion has been made regarding the use of electronic tagging. This, it is submitted, if done, must balance the right to privacy under ***KS Puttaswamy v. Union of India***[79] and ***Frank Vitus*** (*supra*);

21.7.2 The use of Aadhaar biometric data through a centralised database in certain cases where it is specifically requested in the legitimate interest of the State;

21.7.3 On the administrative side, it is suggested that when the verification of the sureties has been undertaken on the basis of police verification and revenue verification reports but later found

[79] (2019) 1 SCC 1

to be false, mandatory departmental inquiries should be instituted against the erring officials. The fixed deposit or bank account of the surety should be placed under *lien* after linkage with the bail bond;

21.7.4 The introduction of real-time biometric verification, similar to what has been adopted by telecom service providers for the issuance of SIM cards. Such verification should also include authentication of immovable property documents and other financial instruments relied on by the surety. This is possible through the integration of various portals such as UIDAI, M-Parivahan, Registry Records etc;

21.7.5 The introduction of 'USIN'-Unique Surety Identification Number that would enable courts across jurisdictions to, through a centralised database, detect multiple uses of the same sureties, thereby reducing the possibility of erroneous orders of bail. When such instances are found, the person should be identified, traced and proceeded against in accordance with law within a short span of time. The time frame suggested is two days;

21.7.6 To revise surety bond formats to incorporate enhanced disclosures such as details of employer, certificate of identity etc., biometric linkage and the history of the person having stood as surety on earlier occasions;

21.7.7 When an accused person, particularly a foreign national, is identified as a flight risk, all Airports and border authorities should be notified along with name and photograph to account for the possibility of them escaping. When such individuals are released on bail, the embassy of their country of origin should be notified for all necessary action. If such an accused seeks permission to travel abroad, the same can be allowed only on the basis of strict/stringent conditions; and

21.7.8 Judicial officers, police and revenue officials need to be periodically trained regarding surety-based bail- the difficulties it poses for indigent undertrials etc.

21.8 The appellant, Union of India, has also, for its part, made some suggestions to this Court. They are as follows:

> "Deposit of Passport & Travel Restrictions
> 1. The accused's passport should be mandatorily deposited either with the investigating agency or with the concerned Court to prevent any unauthorized travel.
> 2. It is submitted that restrictions should be imposed on travel beyond local jurisdiction, and no outside travel should be allowed without permission of the Trial Court.
> 3. The accused should not be granted permission by the Court to exit the country after

being granted bail until the completion of trial, and in case of conviction until the sentence is completed, as there is a high potential risk that such foreign national would not return to India to face the trial in Courts.

Bail security, Sureties and financial safeguards

4. The accused should be released from jail only after due furnishing and verification of at least two solvent Sureties, in addition to Cash Bail and personal bond. This Hon'ble Court in ***Hani Nishad v. State of U.P. reported as 2018 SCC OnLine SC 3946*** and in ***Girish Gandhi v. State of U.P. reported as (2024) 10 SCC 674*** has held that 'there shall be two sureties who shall execute the bond of equal amount'.

5. The amount of Cash bail/ personal bond, when prescribed, should be commensurate with the severity of crime; and it may be prescribed as a percentage of seizure value of narcotics in the case. A person involved in trafficking 5 kg of Cocaine or Heroin should not have personal bond same as for person involved in trafficking of 100 grams Cocaine or 250'grams of Heroin. Thus, furnishing personal release bond of high value and producing sureties of the similar commensurate amount to the satisfaction of the Trial Court will ensure that such offences are not repeated and only genuine Sureties give guarantee for the accused.

6. It is submitted that the sureties furnished by the accused should be genuine, non-professional, and their credentials, including residential addresses should be verified by the jurisdictional Police for authenticity, before release of the accused on bail. Verification of: (i) Aadhar Card and/or PAN Card of the Sureties through respective Government authorities/portals; (ii) Claim of employment from the employing entity/firm/company; (iii) Claimed business activities, if any, and (iv) Existence of bank account mentioned by the Sureties, from the concerned banks, should invariably be carried out before the release of the accused on bail. That for this purpose the investigating agency may coordinate with the jurisdictional Police Station for verification of the genuineness of documents and physical existence of the Sureties.

7. A copy of the verification reports of the said credentials and addresses declared by the accused and by the Sureties/ Guarantors should be placed before the Trial Court before release on bail, and a copy should also be kept in the case files of the investigating agency and Police.

8. Immediate action should be initiated against the Sureties, including forfeiture of their properties, in case any bail condition is violated by the accused.

Address, Contact details verification and Monitoring

9. The residential address provided by the accused should be verified by the jurisdictional Police and reported to the Trial Court, before the accused is released on bail. This would prevent furnishing of incomplete or wrong/fake address and would make tracing of the accused easy later. That, any changes in the address should be immediately notified by the accused to the Court, jurisdictional Police authorities and the investigating agency.

10. The accused should furnish complete and verifiable contact details, including a valid mobile number, to the investigating agency and shall promptly report any change therein. The registered mobile number should remain active and reachable at all times to ensure that the investigating agency can establish contact with the accused whenever required.

11. The accused should be required to mark weekly physical attendance at the jurisdictional police station and be present on each date in Trial Court, and shall report to the investigating agency, as and when called for or required..

12. In all such cases booked by any agency, a copy of bail order should be invariably be forwarded to the jurisdictional Police Station to monitor the conduct and movements of the accused.

Foreign nationals-registration, monitoring and safeguards

13. That in case of foreign nationals it is submitted that prior to their release on bail, the accused should register themselves with the Foreigners Regional Registration Office (FRRO), and submit a report to the Trial Court and the investigating agency.

14. In case the accused is a foreign national, he shall file affidavit before the Trial Court before his release on bail from jail, stating the source of their funds and source of their income in this country, giving the details of legal channels including bank accounts through which they would be operating their finances for bearing their living expenses.

15. That look Out Circulars may be issued immediately by the investigating agency against the foreign nationals arrested under NDPS Act, and it may be continued till completion of trial, including during bail, to ensure his continued presence.

16.An undertaking should be taken from the Embassy of the country concerned before grant of bail that the national belongs to their country, as sometimes such accused carry forged passports and at the time of further proceedings and deportation, the Embassy concerned refuses to recognize the deportee as their national.

**17.** A certificate from concerned embassy/ consulate may also be obtained, assuring that the accused shall not leave the country, shall attend court hearings and shall abstain from committing any further offences. Bail should be denied if such a certificate is not granted by the concerned embassy/ consulate.

**18.** The concerned Embassies and Consulates should be promptly informed about the accused, their case details and the bail conditions, and they should be requested to provide the details regarding the accused and his/her whereabouts, including whenever the accused approaches the embassy/consulate for any consular services.

**19.** In appropriate cases, Courts may consider electronic surveillance methods such as GPS tagging of the foreign national accused to ensure continued presence within jurisdiction.

**20.** Foreign nationals involved in repeat offences of narcotics-related cases should be blacklisted and subsequently deported out of the country after facing trial and if acquitted by the Court or after completion of sentence, as the case may be, under the provisions of relevant laws.

**21.** Biometric details, including iris recognition of foreign nationals, should be captured by the FRRO, and a secure access be provided to Law Enforcement Agencies (LEAs). Integrating the

Bureau of Immigration/FRRO database with the NCRB criminal database would enable identification of passengers with criminal histories, including those exiting or re-entering or exiting by using a different or false identity. Furthermore, Bureau of Immigration/FRRO database should also be integrated with the National Automated Fingerprint Identification System (NAFIS).

**22.** A centralized database containing details of all foreign nationals arrested under NDPS Act by all concerned enforcement agencies may be created and made accessible to all agencies. Further, a digital dashboard for monitoring cases pertaining to foreign nationals can be created indicating case status, bail and trial status etc. for greater coordination amongst all agencies.

Procedural reforms, Expeditious trial and Legal Expounding

**23.** Investigating agencies should expedite filing of Special Leave Petitions and its listing on High Priority for an early hearing when bail orders are being challenged.

**24.** That all cases involving foreign nationals may be referred to fast Track Courts to ensure expeditious trial and disposal, so that they should not get an opportunity for seeking bail on the ground of long incarceration.

**25.** The term 'long incarceration' may be defined and the same should be read in terms of section 479 of BNSS and section 436A of CrPC, as presently absence of such timeline, various courts are construing it differently and allowing bail citing long incarceration with varied timelines as criteria for granting bail to the accused.

**26.** That compliance of Section 129 of BNSS may be made mandatory and a specific provision may be incorporated to enable the execution of a 'Bond for Good Behavior' in respect of repeated offenders under NDPS act. This would facilitate effective supervision and control over foreign nationals involved in the repeated violation.

**27.** That this Hon 'ble Court in ***Tofan Singh v. State of T.N. reported as (2021) 4 SCC 1*** held that for the purposes of confessional statements, the officers under the NDPS Act (inquiry/investigation) must be treated as "police officers" under Section 25 of the Evidence Act.

> Therefore, confessions made to such officers under Section 67 of the NDPS Act are inadmissible as evidence because they would violate Article 20(3) and the protections under the Evidence Act. This judgement is being invariably relied upon by the High Courts for granting bail to the accused in cases wherein the allegations are on the basis of statements of co-accused, even if duly corroborated with other evidence, for example the instant case. While Tofan Singh judgement is a milestone in protecting against wrongful conviction, a nuanced application is necessary. Repeat offenders, having demonstrated disregard for the law, should not be allowed to exploit procedural protections to perpetuate organized or habitual crime. Further, it is seen that repeat offenders/ masterminds are not directly involved with possession and carriage of narcotics; thus statements once corroborated with independent evidence should not be discarded, especially at the bail stage.
>
> Thus it may be expounded and elucidated that statements recorded under Section 67 may not be admissible during trial, they may nevertheless be considered/ admissible while adjudicating a bail application in NDPS cases.
>
> **28.** That the above submissions and suggestions are submitted keeping in mind the sophisticated modus operandi adopted by the masterminds of narcotic and trafficking syndicates. Furthermore, reliance is being placed on the decision of this Hon'ble Court in ***Union of India v. Vigin K. Varghese reported as 2025 SCC OnLine SC 2440*** and also on ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India reported as (1994) 6 SCC 731.***"

**22.** Apart from the above, after inputs from NALSA, Mr. SV Raju, learned ASG appearing for the Union of India, and Mr. Siddharth Luthra, learned *amicus curiae,* together, made the following joint suggestions to the Court:

"

**1.1** Based on the suggestions of DRI and the updated comments the following guidelines are proposed. It is made clear that these guidelines are only applicable for the grant of bail by the trial court/appellate court to foreign nationals and non-citizens who are being prosecuted for offences under NDPS in relation to commercial quantity.

**1.2** Directions to all Courts that while granting bail/suspension of sentence, in cases under NDPS involving commercial quantity to foreign nationals, to impose a condition for the accused's passport to be deposited with Court if not seized by the investigating agency or already lying deposited with the Court, or any other Court or agency.

**1.3** Directions to all Courts granting bail/suspension of sentence, that in cases under NDPS involving commercial quantity to foreign nationals, a condition for grant of bail be imposed that Accused should not be allowed to travel outside India/ jurisdiction of the Court, without permission of the Court granting bail or the Trial Court.

**1.4** Directions to all Courts that while granting bail/suspension of sentence, in cases under NDPS involving commercial quantity to accused foreign nationals to register themselves with the FRRO within one week of release and submit a report to the Trial Court and Investigating Agency.

**1.5** Directions to FRRO, Ministry of Home Affairs, to create a mechanism (portal) for accused foreign nationals to register themselves with the FRRO within one week of release on bail/suspension of sentence, in cases under NDPS involving commercial quantity to and submit a report to the Court granting bail and/or Investigating Agency.

**1.6** Directions be issued to investigating agencies, that upon grant of bail/suspension of sentence in cases under NDPS involving commercial quantity to accused foreign nationals, the investigating agency is directed to request the Ministry of Home Affairs to issue Look Out Notice against such persons, within 2 working days of the order being passed.

**1.7** Directions to all Courts that while granting bail/suspension of sentence, in cases under NDPS involving commercial quantity to accused foreign national to provide two sureties for grant of bail. (Note-Alternatively, this Court may consider whether it should be left to the discretion of the Court to ask for one or two sureties while granting bail.

**1.8** DRI has suggested that amount of Cash/ Personal Bond should be commensurate with the severity of crime or percentage of seizure value of narcotics in the case. This suggestion seeks to tie the Cash/ Personal Bond to the "severity of crime or percentage of seizure value of narcotics.".

AMICUS NOTE – It would be appropriate and in consonance with precedents of this Court, to issue "Direction to Courts granting bail/suspension of sentence to foreign nationals accused in cases under NDPS involving commercial quantity may impose appropriate surety amount to seek to ensure that accused does not flee from justice upon release."

**1.9** Directions be issued to Courts to ensure that the declared place of residence of the Foreign National Accused in bail bond, in cases under NDPS involving commercial quantity in India, is verified not later than 3 working days of furnishing bail bond and prior to their release.

**1.10** Direction be issued to Courts granting bail/suspension of sentence to foreign national accused in a NDPS Case involving commercial quantity, for ensuring verification of the sureties by the investigating agency , within 3 working days of furnishing bail bond and prior to their release. This verification report be placed by the investigating agency no later than 3 days before the Court where bail bond is furnished.

**1.11** Directions be issued to Courts granting bail/suspension of sentence to Foreign National Accused in cases under NDPS involving commercial quantity, to furnish, within a period of 7 days from release on bail, a valid Indian mobile number which is functional/operative in India, (and to keep it switched on permanently), to the investigating agency and to further report any change therein, within 72 hours of change, to the Court accepting bail/surety bonds.

**1.12** Directions be issued to Courts to impose a condition of grant of bail, on foreign national Accused granted bail/suspension of sentence in cases under NDPS involving commercial quantity, to mark their presence weekly in the jurisdictional police station of their place of residence, or report to the investigating officer, (if within a 30 km distance from residence of accused) upon release on bail.

**1.13** Directions be issued to Courts granting bail to Foreign national Accused in cases under NDPS involving commercial quantity, a condition be imposed that accused shall file an affidavit before the Trial Court within one week of his release on bail, stating source of funds and source of income in this country if any, and giving details of their bank accounts, if any, through which he/she would be operating their finances.

**1.14** Directions be issued by the Court granting bail to investigating agencies concerned, to inform the Embassies/Consulates of the country of which foreign national accused is a citizen, in cases under NDPS involving commercial quantity of grant of bail.

**1.15** Directions be issued to Courts granting bail, to request the concerned embassy/ consulate of country of which accused is a citizen, to provide a certificate, within 7 days of release, assuring that foreign national accused in cases under NDPS involving commercial quantity granted bail shall not leave the country, shall attend court hearings and shall abstain from committing any further offences. The embassy/ consulate of country of which accused is a citizen, may also be requested by the Court granting bail, to share details of the accused available with them and to intimate the Court granting bail, whenever the accused approaches them for any consular services.

**1.16** Directions be issued to Courts to ensure compliance of Section 129 of BNSS, 2023 while granting bail to Foreign national Accused in cases under NDPS involving commercial quantity

**1.17** Directions be issued to Union of India to consider a specific provision to be incorporated in NDPS Act to enable the execution bond in terms of Sec. 34 of NDPS Act at the pre-conviction stage or at the time of granting bail.

**1.18** Direction be issued to Ministry of Electronic and Information Technology and Ministry of Home Affair, to formulate guidelines/ frame rules for use of Geo-fencing Technology, if viable, to ensure that accused do not violate conditions of Bail vis-à-vis geographic limitations.

**1.19** Direction to be issued to the Unique Identification Authority of India in terms of Good Governance (Social, welfare, innovation, knowledge) Rules, 2020 updated as on 23.10.2023, to allow use of Aadhar Authentication for Surety Verification.

**1.20** Directions to be issued to Union of India to upgrade and adopt the existing portal, viz. NIDAAN (National Integrated Database Portal on Arrested Narco Offenders), by all relevant Law Enforcement Agencies for comprehensive data entry with respect to NDPS accused, as well as for effective monitoring, especially of repeat offenders.

**1.21** Directions to the Ministry of Law and Justice & Ministry of Home Affairs & State Governments/Union territories, to create and populate a Centralized Database of Sureties i.e., Surety Information Management System (SIMS) with provision of allotting a Unique Identification Number, to each surety."

Apart from these, further suggestions have been made by the learned *amicus curiae* with due consideration, *inter alia,* of the Surety Scrutiny Management Application prepared and used by the High Court of Karnataka:

> "2.1. Directions be issued to Union of India and States/Union Territories that if fabricated or impersonated sureties are found to have been verified and accepted based on police verification reports as well as revenue officers' verification reports, a departmental inquiry should be initiated against the concerned officials responsible for such verification by erring officials including police, revenue with respect to such negligence, collusion or dereliction of duty. (Note –There should also be timeline prescribed for initiation and conclusion of the aforesaid departmental enquiry)
> 2.2. Directions to be issued to the Reserve Bank of India to issue appropriate circulars to all banks to link Fixed Deposit or Bank Account of the person standing surety to the Bail Bond and create a lien on the Bail Bond amount, in cases under NDPS involving commercial quantity to accused foreign national.
> 2.3. Direction to be issued to the Registrars of all High Courts to create digital infrastructure/portal for courts to access and verify financial and property credentials for authentication of documents/information of surety, instantaneously & to coordinate with Unique Identification Authority of India, Ministry of Road Transport Highway, Reserve Bank of India and Revenue Departments of State Governments/Union territories in this regard.
> 2.4. Directions to be issued to the Unique Identification Authority of India, Ministry of Road Transport Highway, Reserve Bank of India and Revenue Departments of State Governments/Union territories, to issue necessary circular/directions so that information on Aadhaar, M-Parivaahan, Bank Account details, Land Registry Records maintained online by Registrar are accessible through the aforesaid online portal for real time verification.
> 2.5. Directions to be issued to Ministry of Home Affairs to revise FORM 47 of the BNSS, 2023 with relevant legislative amendment to incorporate enhanced disclosures, biometric linkage, and declarations regarding previous surety engagements, & provide for penal consequences for false statements.
> 2.6. Directions be issued to High Courts and Judicial Academies to provide structured training to Courts within their on the socio-economic impact of surety-based bail in

> cases under NDPS involving commercial quantity to accused foreign national, and its impact for indigent undertrials, and judicial academies ought to incorporate dedicated modules on bail jurisprudence, & financial vulnerability of foreign national Accused accused/convicts in custody in cases under NDPS involving commercial quantity and access to justice.”

**23.** For ease, a tabular representation of all the suggestions made across the bar and the stand of the parties thereon is placed below:

| S.No. | Suggestions | DRI | Comments of Amicus Curiae on DRI’s suggestions | Union of India | Consolidated suggestions of Amicus and UOI |
|---|---|---|---|---|---|
| 1. | The accused passport should be mandatorily deposited either with the investigating agency or with the Court to prevent unauthorized travel. | Yes | Yes, with modification (no blanket ban, such a restriction should be left to the discretion of the court) | Yes | Yes |
| 2. | Accused should not be allowed to travel outside without permission of the Trial Court. | Yes | Yes | Yes | Yes |
| 3. | Accused should register themselves with FRRO within one week of release and submit a report to the Trial Court and Investigating Agency. | Yes | Yes | Yes (no timeline given) | Yes |
| 4. | Issuing immediate Look Out Notice against foreign national accused arrested under NDPS Act. | Yes | No blanket direction; discretion should be with the competent authority | Yes | Yes (within two working days of the order passed) |

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| **5.** | For Foreign national requirement of two sureties is mandatory. | Yes | Discretion of competent court | Yes (in addition to cash bail and personal bond) | Yes (alternatively, whether one or two surety, discretion should be left with the Court to decide.) |
| **6.** | Requirement of amount of Cash/Personal Bond commensurate with the severity of crime or percentage of seizure value of narcotics in the case. | Yes | No, it would amount to onerous bail condition; | Yes | Yes but with modification; appropriate surety amount can be imposed |
| **7.** | Verification of residential address of the accused prior to release. | Yes | Yes | Yes (by jurisdictional police and report it to Trial Court) | Yes (no later than three working days of furnishing bail bonds) |
| **8.** | It is submitted that the sureties furnished by the accused should be genuine, non-professional, and their credentials, including residential addresses should be verified by jurisdictional police for authenticity, before release of the accused on bail. Verification of: (i) Aadhar Card and/or PAN Card of the Sureties through respective government authorities/ portals; (ii) Claim of employment from the employing entity/ firm/ company; (iii) Claimed business activities, if any, and (iv) Existence of bank account mentioned by the sureties, from the concerned banks, should invariably be carried out before the release of the accused on bail | Yes | This suggestion is merely a restatement of law and procedure. What is more important is to ensure that the same should attract proportionate consequences for the erring officials. | Yes (for this purpose, the investigating agency may coordinate with the jurisdictional police station) | Yes (by investigating agency within 3 working days of furnishing bail bond. This verification report be placed by the investigating agency no later than three days before the court where bail bond was furnished.) |

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| **9.** | Placing verification of accused and surety before the trial court before the release of the accused. | Yes | This suggestion is merely a restatement of law and procedure | Yes | - |
| **10.** | Accused should furnish complete and verified contact details, including a valid mobile number, to the investigating agency and shall promptly report any change therein and registered mobile number should remain active. | Yes | This suggestion is merely a restatement of law and procedure; said requirement to be strictly and promptly enforced | Yes | Yes (change should be reported within 72 hours of change) |
| **11.** | Accused is required to mark his presence weekly in the jurisdictional police station and report to investigating officer. | Yes | Yes, with modification (cannot be blanket condition of all bail orders) | Yes | Yes |
| **12.** | To enable comprehensive coverage and real-time verification, an electronic Aadhaar/PAN-based authentication system for verification of sureties may be explored by leveraging modern technologies, in consultation with relevant stakeholders such as UIDAI. | Yes | Yes | -- | Yes |
| **13.** | Foreign national shall file an affidavit of his release on bail within one week of their bail, stating source of their funds and source of their income in this country, giving details of their bank accounts through which they would be operating their finances for bearing their life expenses. | Yes | Yes (reasonable time should be given, failure should not ipso facto lead to cancellation of bail | Yes (no timeline given) | Yes |

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| **14.** | Forwarding the copy of the bail order to the jurisdictional police station to monitor the conduct and movement of the accused | Yes | Yes | Yes | - |
| **15.** | Immediate action against the sureties / Forfeiture of their properties in the case of violation of bail condition by the accused. | Yes | This suggestion is overboard and contrary to statutory scheme | Yes | - |
| **16.** | A certificate from concerned embassy/consulate may also be obtained, assuring that the accused shall not leave the country, shall attend court hearings and shall abstain from committing any further offences. | Yes (Certificate from the concerned Embassy/ Consulate should not be made a pre-condition for granting bail to the accused.) | Yes | Yes (bail should be denied if such a certificate is not granted by the concerned Embassy/Consulate) | Yes (within 7 days) |
| **17.** | Informing Embassies and Consulates about the accused along with the case details and requesting them to share details of the accused and his whereabouts whenever accused approaches them for any consular services. | Yes | Yes | Yes | Yes |
| **18.** | Investigating Agencies should expedite filing of SLPs and seek urgent listing or early hearing when bail orders are challenged. | Yes | Unjust and unreasonable | Yes | - |
| **19.** | Reference of cases involving foreign national "Fast Track Court". | Yes | -- | Yes | - |
| **20.** | In appropriate cases, Courts may consider electronic surveillance | Yes | Geo-fencing rather than | Yes | Yes with modification, use of geo- |

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| | methods and GPS tagging of the foreign national accused to ensure continued presence within jurisdiction. | | constant monitoring | | fencing technology if viable |
| **21.** | Biometric details, including iris recognition of foreign nationals, should be captured by the investigating agency and integrated with LEAs, BOI/FRRO database with the immigration system. | Yes (after consultation with concerned ministry and relevant agencies viz. MHA and BOI/ FRRO) | Violation of Article 21 | Yes | - |
| **22.** | A centralized database containing details of all foreign nationals arrested under NDPS Act by all concerned enforcement agencies may be created and made accessible to all agencies. | Yes (via existing NIDAAN portal upgrade) | Yes | Yes | Yes (via NIDAAN portal, especially for repeated offenders) |
| **23.** | The term 'Long incarceration' may be defined and the same should be read in terms of section 479 of BNSS and section 436A of CrPC, as presently courts are construing it differently and allowing bail citing long incarceration as criteria for greater coordination amongst all agencies. | Yes | Only possible if "introduced legislatively" | Yes | - |
| **24.** | Compliance of Section 129 of BNSS may be made mandatory and a specific provision may be incorporated enabling execution of a "Bond for Good Behaviour" in respect of foreign nationals involved in repeated violation. | Yes | Yes | Yes | Yes |

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| **25.** | Statements recorded under Section 67 of the NDPS Act may not be admissible during trial, they may nevertheless be considered at the stage of bail. | Yes | No | Yes | - |
| **26.** | Provisions of Section 34 of NDPS Act which provides for execution of bond by a convicted accused for abstaining from commission of any offence under this Act can also be considered for inclusion in the guidelines. | Yes | -- | Yes | -- |
| **27.** | For registration, verification, and monitoring of sureties, an electronic software platform, viz. a Surety Information Management System (SIMS), may be further developed and utilised by the courts and LEAs. | Yes | -- | Yes | Yes |
| **28.** | Foreign nationals involved in repeat offences of narcotics related cases should be blacklisted and subsequently deported after facing trial or acquittal or completion of sentence; | -- | -- | Yes | - |
| **29.** | An undertaking from Embassy of the country concerned before grant of bail that the national belong to their country. | -- | -- | Yes | - |
| **ADDITIONAL SUGGESTIONS BY LD. AMICUS** | | | | | |
| **30.** | Direction to FRRO, MHA to create a mechanism (portal) for accused foreign nationals to register themselves with | - | Yes | - | - |

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| | the FRRO within one week of release on bail | | | | |
| **31.** | Where impersonated sureties are found to have been verified and accepted based on police verification reports as well as revenue officers' verification reports, a mandatory departmental inquiry should be initiated against the concerned officials responsible for such verification- Ministry of Home Affairs to issue Advisory, with regards to Departmental Consequences on erring officials including police, revenue and court staff with respect to such negligence, collusion or dereliction of duty.<br>There should also be timeline prescribed for conclusion of the aforesaid departmental enquiry. | - | Yes | - | - |
| **32.** | Direction can be issued to RBI to issue appropriate circular to all banks to link fixed deposit or bank account of concerned surety to bail bond and create lien on bail bond amount | | Yes | | - |
| **33.** | Direction for Registrars of all High Courts to create digital infrastructure/portal for courts to access and verify financial and property credentials for authentication of documents/information of surety. | - | Yes | - | - |

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| **34.** | Directions to the Unique Identification Authority of India, Ministry of Road Transport Highway, Reserve Bank of India and Revenue Departments to issue necessary circular/directions so that information on Aadhaar, M-Parivaahan, Bank Account details, Land Registry Records maintained online by Registrar are accessible through the aforesaid online portal for real time verification. | - | Yes | - | - |
| **35.** | Directions to Ministry of Home Affairs to revise FORM 47 of the BNSS, 2023 with relevant legislative amendment to incorporate enhanced disclosures, biometric linkage, and declarations regarding previous surety engagements, with penal consequences for false statements. | - | Yes | - | - |
| **36.** | High Courts and Judicial Academies can be directed to provide structured training on the socio-economic impact of surety-based bail and the barriers it creates for indigent undertrial and judicial academies ought to incorporate dedicated modules on bail jurisprudence financial vulnerability and access to justice. | - | Yes | - | - |
| **37.** | Introduction of The Professional Bail Bondsmen (Regulations) Rules, 2026 to regulate | - | - | - | Yes |

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| | individuals functioning as professional bail bondsmen. | | | | |

**24.** The counsel appearing in this matter have put in copious amounts of effort as evidenced by the detailed suggestions referred to above. One further aspect that has been suggested is the introduction of rules governing professional sureties. This is in recognition of the fact that while sureties are essential to the manner in which the criminal justice system functions, it may be that it is not a matter of relative ease for all persons to secure sureties, particularly foreign nationals who may, for obvious reasons, lack family connections, adequate finances within the country. In cases involving foreign nationals and such hard drugs with severe destructive capacity, sureties who are verified, accountable, subject to certain rules and regulations become all the more important.

**25.** Mr. Raju learned ASG states that currently no rules stand promulgated in this regard and, as such, the Court may issue appropriate directions. In doing so, we had requested Mr. Luthra, to take necessary inputs from all the stakeholders, including the National Legal Services Authority, and accordingly, all relevant documents were handed over to them**.** The comments and suggestions given indicate that they support the strengthening of the surety framework in cases involving foreign nationals, specifically in the context of NDPS cases. It has highlighted certain practical challenges that occur; the need for proportionality; and case-specific calibration along with preserving judicial discretion.

**Power of this Court to issue Directions under Article 142**

**26.** In considering the above said submission, this Court must properly appreciate the majesty of the power contained under Article 142, recognising alongside the vastness of this power, that its use is best made in emergent situations or positions of true vacuum. The words of a Constitution Bench of this Court in ***Supreme Court Bar Assn. v. Union of India***[80], best explain the power, as under:

> "**47.** The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes*. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the

[80] (1998) 4 SCC 409

statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties*. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available *only* to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., *to do complete justice between the parties*. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

**48.** The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it.* Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver

> in the nebulous areas" (see *K. Veeraswami* v. *Union of India* [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject."

(emphasis supplied)

In other words, *sparing use* is the governing principle. Why it is so, is obvious. It is so because legislating is not within the Court's domain in view of the separation of powers, which is a recognised feature of the basic structure of the Indian Constitution[81]. At the same time, it is well recognised that it is perfectly within the judicial domain to step in when the need arises, and the same remains in force until a law in that regard has been enacted by the Parliament. Let us look to past instances.

26.1 Perhaps the most famous example would be ***Vishakha v. State of Rajasthan***[82] wherein while adjudicating a writ petition under Article 32 of the Constitution of India, in the immediate aftermath of the brutal sexual assault of a social worker in Rajasthan, with the aim of protecting the rights of women under

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[81] Kesavananda Bharti v. State of Kerala (1973) 4 SCC 225

[82] (1997) 6 SCC 241

Articles 19 along with 14 and 21, a three Judge Bench of this Court issued directions under Articles 32 and 141 of the Constitution declaring guidelines and norms for protection of women against sexual harassment at the workplace. These guidelines held the field until the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted.

26.2 ***Prakash Singh v. Union of India***[83], was a case that dealt with the absence of any national-level action regarding the working and efficacy of the Indian Police Act, 1861, despite the fact that various committees, at different points of time, had recommended certain changes/amendments etc. Considering the same situation and relying on ***Vineet Narain v Union of India***[84], while observing as under:

> "**26.** Having regard to (*i*) the gravity of the problem; (*ii*) the urgent need for preservation and strengthening of the rule of law; (*iii*) pendency of even this petition for the last over ten years; (*iv*) the fact that various commissions and committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (*v*) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by

[83] (2006) 8 SCC 1
[84] (1998) 1 SCC 226

> the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of the criminal justice system in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions…”

The Court directed the establishment of a state security commission, police establishment board and police complaint authority laying down norms for selection and tenure of the Director General of Police as also the Inspector General, and setting up a National Security Commission at the national level.

26.3 We should also discuss ***Vineet Narain*** (supra) here. That case, though, originally concerned the inertia of the Central Bureau of Investigation in conducting investigations, but later evolved to have a much wider scope. More than the facts of the case, though, or the individual directions, the discussion of Article 142 is instructive for our purposes:

> “**49.** There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role…
>
> …

**51**. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In Erach Sam Kanga v. Union of India [ WP No. 2632 of 1978 decided on 20-3-1979] the Constitution Bench laid down certain guidelines relating to the Emigration Act. In Lakshmi Kant Pandey v. Union of India [(1984) 2 SCC 244] (In re, Foreign Adoption), guidelines for adoption of minor children by foreigners were laid down. Similarly in State of W.B. v. Sampat Lal [(1985) 1 SCC 317 : 1985 SCC (Cri) 62 : (1985) 2 SCR 256] , K. Veeraswami v. Union of India [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] , Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] , Delhi Judicial Service Assn. v. State of Gujarat [(1991) 4 SCC 406] (Nadiad case), Delhi Development Authority v. Skipper Construction Co. (P) Ltd. [(1996) 4 SCC 622] and Dinesh Trivedi, M.P. v. Union of India [(1997) 4 SCC 306] guidelines were laid down having the effect of law, requiring rigid compliance. In Supreme Court Advocates-on-Record Assn. v. Union of India [(1993) 4 SCC 441] (IInd Judges case) a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] elaborate guidelines have been laid down for observance in workplaces relating to sexual harassment of working women. In Vishaka [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] it was said: (SCC pp. 249-50, para 11)

> "11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 (*) (As amended at Manila, 28th August, 1997) as those representing the minimum standards necessary to be

> observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:
>
> "*Objectives of the Judiciary*:
>
> 10. The objectives and functions of the Judiciary include the following:
>
> (*a*) to ensure that all persons are able to live securely under the rule of law;
>
> (*b*) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
>
> (*c*) to administer the law impartially among persons and between persons and the State."
>
> Thus, an exercise of this kind by the court is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field."

26.4 ***Common Cause v. Union of India***[85], is a Constitution Bench judgment of this Court where passive euthanasia was recognised as permissible. The Court issued directions under Article 142 for the issuance of advance directive which, it was held, could be issued by an adult of a healthy state of mind, laying down the procedure to be followed in unambiguous terms for the possibility that, at a point of time in future, medical treatment to them should be withheld or withdrawn.

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[85] (2018) 5 SCC 1

26.5 In ***Directions in the Matter of Demolition of Structures, In re***[86], a co-ordinate Bench was dealing with writ petitions filed by persons aggrieved of their commercial/residential properties being demolished without following due process of law. It was held that the Court had a duty to put to rest the fears of members of society, and as such issued directions under Article 142, laying down the procedure to be followed when the government decides to undertake any demolition, such as issuance of notice, hearing the parties before passing a demolition order, appealing against that order, as also the very process of demolition itself.

26.6 ***Gohar Mohammed v. U.P. SRTC***[87], was an appeal arising out of a motor accident claim case. The facts of the said case were nothing out of the ordinary, and the appeal against concurrent findings of the Courts below was dismissed. However, in the course of the proceedings, the issue of delay in disposal of claim cases both at the tribunal and appellate level arose, and the court deemed fit to issue the requisite directions regarding how multiple claim petitions in respect of the same accident are to be dealt with,

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[86] (2025) 5 SCC 1
[87] (2023) 4 SCC 381

thereby minimizing the time taken in disposal. Directions were issued to Courts, police authorities, as also insurance companies.

26.7 In ***Resident's Welfare Assn. v. State (UT of Chandigarh)***[88], this Court was dealing with an appeal from an order passed in writ petitions filed by Resident Welfare Associations in the city of Chandigarh. The grievance was the grant of permission to developers/sellers across various areas concerning the development in the city. In these proceedings, the Court issued directions under Article 142 for protection of Corbusian Chandigarh, recognising its modern heritage value including the constitution of heritage committee which would be responsible, *inter-alia,* for grant of permissions for constructions.

26.8 In ***Smruti Tukaram Badade v. State of Maharashtra***[89], this Court issued directions intended to clarify and streamline directions issued in earlier matters concerning the recording of evidence by vulnerable witnesses.

26.9 In ***Shilpa Sailesh v. Varun Sreenivasan***[90], a Constitution Bench of this Court held that by virtue of the power under this

[88] (2023) 8 SCC 643
[89] (2022) 18 SCC 24
[90] (2023) 14 SCC 231

Article, this Court may grant divorce to the parties on the ground of irretrievable breakdown of the marriage while hearing a transfer petition *"in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion."* and also grant the same even if one of the parties opposes it *" …to do "complete justice" to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified…."*.

**27.** All of the instances above make it abundantly clear that this Court has on various occasions exercised this power and done so across different areas of law and also in cases across jurisdictions. Throughout, it has been clear that this Court is putting in place stop-gap arrangements, leaving it open for the legislative wing of the Government to step in as and when it deems fit. It could be argued that in the present case the justification for invocation of Article 142 is difficult for the reason that each State/High Court does have a process in place. So, is there indeed a gap in which this power could be exercised? While we acknowledge that such a view is possible, we are also aware that despite these processes being in place, cases such as the present one have arisen, giving rise to unfortunate circumstances where the accused has fled. Now, although, in this case the contraband substance was seized and the demonstrated ill effects thereof could not be spread into society, the conspiracy of which the accused was a part may still be at large. It is equally possible that in another case the contraband substance could be released in the society causing unrecognisable levels of havoc and the same may continue, if the perpetrators are not brought to the book. That apart, it also appears to us quite plainly, that in cases involving foreign offenders, the general processes of surety verification may not, by itself, be sufficient.

After all, at the cost of repetition it be stated that sureties are the very people who are responsible for ensuring that the accused is available to the investigative/judicial authorities as and when required, and if these people themselves turn out to be fake, false or non-existent, the process in place is rendered entirely ineffective, putting an irreparable loss to the security and shaking the confidence in the justice delivery system. Still further, as we have already noticed above, this issue has engaged the attention of at least two High Courts, as also this Court, even though, in the latter situation, no constructive output could be elicited. In these circumstances, and in view of lack of uniformity across jurisdictions, we are of the view that the exercise of power under Article 142 would be appropriate and justified.

**OUR VIEW**

**Analysing The Inputs – and Our Opinion Thereupon**

**28.** As the paragraphs above demonstrate, learned counsel appearing for the parties have made numerous suggestions to this Court. Having concluded that the exercise of power under Article 142 would be justified, we now proceed to assess the merits of each of the suggestions. Here only, we may clarify that our discussion, directions and suggestions are confined only to accused who are foreign nationals involved in cases concerning commercial quantity of contraband under NDPS Act.

**28.1** Regarding deposit of passport of the foreign national accused in an NDPS case involving a commercial quantity, DRI, the Union of India and the *amicus* are in agreement. At the outset, it is stated that freedom of movement as enshrined in Article 19(1)(d) is not a right enjoyed by foreigners[91]. A three-judge Bench of this Court in

[91] See: Hans Muller of Nurenburg v. State of W.B., (1955) 1 SCC 167 (Constitution Bench); Charles Sobraj v. Supdt., Central Jail, (1978) 4 SCC 104 (Three Judge Bench)

***Sarbananda Sonowal v. Union of India*[92],** restated this position of law as follows:

> **"79.** In *State of Arunachal Pradesh* v. *Khudiram Chakma* [1994 Supp (1) SCC 615] following *Louis De Raedt* [(1991) 3 SCC 554 : 1991 SCC (Cri) 886] , it was held that the fundamental right of a foreigner is confined to Article 21 for life and liberty and does not include the right to reside and stay in this country, as mentioned in Article 19(1)(*e*), which is applicable only to the citizens of the country. After referring to some well-known and authoritative books on international law it was observed that the persons who reside in the territories of countries of which they are not nationals, possess a special status under international law. States reserve the right to expel them from their territory and to refuse to grant them certain rights which are enjoyed by their own nationals like right to vote, hold public office or to engage in political activities. Aliens may be debarred from joining the civil services or certain profession or from owning some properties and the State may place them under restrictions in the interest of national security or public order. Nevertheless, once *lawfully* admitted to a territory, they are entitled to certain immediate rights necessary to the enjoyment of ordinary private life. …"

Be that as it may, the deposit of passport is a serious condition which, in our view, is commensurate with the gravity of the offence, since cases involving commercial quantities under the Act, have heightened punishments.

In a scenario which involves an Indian citizen, an alternative, statutory process is in place i.e., impounding of the passport. Depositing the same before a Court is, in a way, less severe and cumbersome than impounding of a passport under the Passports

[92] (2005) 5 SCC 665

Act 1967, to secure the presence of the accused. We say so because this Act provides, under Section 10(3)(e), for impounding of a passport when proceedings are pending before a criminal Court. It is an entirely independent procedure involving a statutory authority and not the Court directly, and the same should not be resorted to as a matter of course in the interest of investigation as also justice.

While the DRI and the Union are desirous for the depositing of passport to be a mandatory condition in case of a foreign national accused in NDPS case involving commercial quantity, the learned *amicus* suggests that the imposition of this condition should be left to the discretion of the concerned Court. Considering the fact that we are concerned with cases involving commercial quantities of narcotics and psychotropic substances which have various unpleasant and unwelcome effects on the country, we are of the view that depositing of passport is justified as being mandatory. At the same time, it has to be observed that until a person is convicted the presumption of innocence must remain in unrestricted operation. As such, in view of *Para 31* of ***Satwant Singh Sawhney v. D. Ramarathnam, Asstt. Passport Officer***[93] which, in the

[93] 1967 SCC OnLine SC 21 (Followed in Unni Krishnan, J.P. v. State of A.P., (1993) 1 SCC 645; see also: K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1)

words of K. Subba Rao CJ holds that no person, can be denied the right to travel abroad under Article 21 of the Constitution, except under procedure established by law; and as already established, Article 21 rights are available to foreigners as well. We hold that an accused whose passport has been so deposited shall have the right to make an application to the concerned Court seeking release thereof, enabling him to travel, either domestically or internationally as the case may be subject to such conditions as may have been imposed by the concerned Court including the requirement of express permission before travelling outside the territorial jurisdiction of the Court. Whenever an accused makes an application for release of passport, the same has to be decided expeditiously, in a time-bound manner i.e., preferably within four weeks from the date of application.

**28.2** The Foreigners Regional Registration Office (FRRO) is an office under the Ministry of Home Affairs, Government of India that is tasked with the regulation of foreigners in India, including their stay and travel. Registration with this office immediately/soon after release from prison furnishes relevant information to this department, updating them that a particular person has been accused of a crime of serious nature. Accordingly, the department will be able to address any issue pursuant to the requests that may be received by it from such an individual in future. This would also be regarding visa extension, etc. All parties are *ad idem* on this.

**28.3** The issuance of 'Look Out notices' against all such accused has been recommended by all three entities. A LON essentially means that all ports of travel will be notified regarding such person, restricting their right to travel. This cannot be issued as a matter of course in all cases as it depends upon, *inter alia,* the gravity of the offence and the role ascribed to the accused. The restriction on the right to travel has itself been made conditional by the concerned Court specifically imposing the same, and it is agreed that the deposition of the passport has been made mandatory. Whether or not to issue an LON is within the domain of the Executive. The Court may, if it finds it fit and justified by the facts and circumstances of a case, too, impose it as a condition. No further directions need to be issued by us in this regard.

**28.4** The production of two sureties of a like amount, in our view, merits acceptance as a matter of abundant caution. To hold only one person to be entirely responsible for an accused foreign national may, in certain cases, be placing an undue burden upon them. At the same time, it may also be a possibility that the accused may not be able to produce two sureties, given lack of contacts and connections. Such a condition, if held to be entirely inelastic, may become a hindrance to bail itself, and as such it is held to be applicable in ordinary circumstances, relaxable, at the instance of the Court once it records the reasons therefor. Needless to add, the sureties so produced, necessarily, must be genuine, with all their credentials including identity, address and bank-related documents being duly verified by the jurisdictional police and/or authorities of Court and placed before the Court for perusal and recording its satisfaction therewith. The satisfaction respectively of the police and the Court ensures a double layer of scrutiny of the documents so produced.

**28.5** It is suggested that cash-bond should be commensurate with the severity of the crime or to the quantity of the narcotics recovered. The right to bail being contingent upon the payment of money which may in certain cases be a very large amount, will be inappropriate. It is left to the discretion of the Court whether or not the requirement of cash/personal bond is justified in a particular case.

**28.6** The residential address of the accused where he is purported to be staying after release on bail, must necessarily be verified by the police authorities upon the accused securing an order of bail in his favour. This ensures verification of the latest address, as provided, proximate to the release, and the same be placed before the Court. The accused is also required to provide a valid phone number to the Court in the surety bond (as given below in ***Para 28.26***) signed by him. This is also to be verified by the authorities. This number, which must be kept active at all times, is the primary source of contact that the authorities will have with the accused in order to secure his presence, as and when required.

**28.7** One of the suggestions by the entities is that the accused be required to, weekly, mark his presence in the jurisdictional police station and report to the investigating officer. It is difficult to mandate the same across the board. The Courts seized of the matter are the best suited to determine the frequency of presence before itself or before the authorities for it is them, who have interacted with the accused and have a first-hand understanding of the circumstances and behaviour of the accused.

**28.8** In furtherance of real time verification, Aadhaar/PAN based verification of sureties, in consultation with the UIDAI has been unanimously suggested. We refrain from issuing a direction in this regard for there are rules in place whereunder an application can be made by the Government to the concerned body to implement the same. As such, if it is deemed fit, the Government may proceed accordingly.

**28.9** The entities submit that the accused should disclose by way of an affidavit, the source of their funds and the details of the bank accounts maintained by them in the country within one week from the date of release on bail. Ordered accordingly.

**28.10** The suggestion regarding the forwarding of the bail order to the jurisdictional police station of the residence of the accused '*to monitor the conduct and movement of the accused*', in our view, may be too broad. While undoubtedly an order granting bail to an accused should be forwarded to the concerned police station, that cannot be a ground to constantly monitor the movement of the accused, so long as the conditions as imposed by the Trial Court are being scrupulously complied with, by him.

**28.11** The DRI and the Union of India suggest that in case an accused violates the bail conditions, the properties of the surety linked with such bail conditions should be immediately forfeited and necessary actions be taken against them. The learned *amicus* opposed this condition as being overbroad. Given the peculiarity of a foreign national being involved and contraband in question being commercial quantities, we agree with this suggestion. In each case, a lien/charge will be created over the property, both movable and immovable, and in the event of the accused jumping the bail and the surety bond being forfeited, it shall be open for the Court to forfeit the same. Ordered accordingly.

**28.12** When it comes to the certificates from Embassies to be obtained by the accused, we are of the view that such a certificate '*assuring*' that the accused will not leave the country etc., would not be appropriate for the primary purpose of an Embassy, which is to maintain diplomatic relations in the host country, while providing certain services to the residents of the country residing in the latter. It cannot be said that assuring/ensuring presence of an accused is within the scope of their actions, either before or after bail. Be that as it may, the investigating officer of a particular crime shall inform the Consulate/Embassy of the country of origin of the accused that they are an accused in an offence, so that they may be aware of the proceedings against one of their citizens in the country and may even be able to provide them with consular services if required.

**28.13** Those cases in which a foreign national is an accused should be taken up by the concerned Court on priority. It is undisputed that crime of this nature is on the rise and as such the urgency to deal with such matters is justified, sending across a message of deterrence to the world in as much as the drug trade in India is concerned.

**28.14** All three entities suggest that electronic surveillance methods (*gps-tagging/geo-fencing*) should be considered for a foreign national accused, to ensure their continued presence within the jurisdiction. In our view, the introduction thereof cannot be done through judicial decision-making and requires consideration of all relevant aspects by the Legislature, which may, in light whereof and after due consideration of the judgments of this Court in ***Frank Vitus supra***, frame rules in that regard. Further suggestion has been made by the DRI and the Union that the biometric details of foreign national accused persons should be obtained and maintained in a database that is linked across agencies. This suggestion also we leave it to the Executive to decide.

**28.15** It has been unanimously suggested that there should be a centralised database of all foreign nationals accused under the NDPS Act accessible across agencies. We accept this submission, for this will enable speedy verification of sureties and also highlight repeated use of the same particulars either in the same or other jurisdictions; as also it will aid the different bodies within the law enforcement in the country, such as police, customs, and border patrol etc., to access all relevant information immediately. This may be done through upgrading the National Integrated Database Portal on Arrested Narco Offenders (NIDAAN) portal or in a manner as deemed fit by the Union Government.

**28.16** It is suggested that the term '*long incarceratio*n' be defined, for it is a primary ground of bail in view of the observations in ***Najeeb supra.*** This Court, in ***State of Punjab v. Balraj Singh***[94]***,*** in Paras 20-23, observed that this phrase had not been defined and also further made reference to ***Tasleem Ahmed,*** which has already referred the question for consideration.

**28.17** It is suggested that Section 129 BNSS be made applicable to NDPS cases. There is a difficulty in accepting this suggestion, for the text of the Section clearly lays down the scope of its application by listing out the statutes in the context of which it may be applied. There is another suggestion regarding Section 34 of the NDPS Act, which provides for taking of a bond from a convict to abstain from committing any offence. As the words of the Section make clear, it deals with '*convicts'* and not '*undertrials*'. Whether or not such a

[94] 2026 SCC OnLine SC 1058

bond is to be taken from the convict is in the discretion of the concerned Court, not warranting the issuance of any direction from this Court.

**28.18** The DRI and the Union suggest that statements recorded under Section 67 of the NDPS Act, should be admissible at the bail stage even though the judgment in ***Tofan Singh supra*** says that statements under this Section are inadmissible. Such a submission would need to be dealt with in appropriate proceedings, not in this case.

**28.19** The suggestion that departmental enquiries be initiated against persons who were involved in the verification of sureties upon the discovery that they were fake, is a suggestion that merits acceptance, for the process of verification conducted by these officials is the bedrock on which the Court accepts the same and eventually releases the accused. If it is found on the same set of evidence as verified by these officials that, in fact, the details were fake or false, responsibility should be imputed upon them. It has to be said, however, that the standard of care that these officials are required to abide by can be only '*reasonable*' and not unduly '*strict*'.

**28.20** As suggested, a digital portal for the verification of financial and property credentials of sureties appears to be expedient. It will add a layer of protection to that part of the surety verification process that has been directed to be done physically, and it will create a speedy mechanism for that part of the process which does not require physical effort on the part of the authorities.

**28.21** Judicial Academies should provide training to judges regarding its impact and aspects of financial vulnerabilities and access to justice. This suggestion, in our view, is merited. Socio-economic difficulties faced by accused persons, including foreign nationals, should not be a ground which makes the relief of bail difficult to obtain for them. Judges need to uphold the letter of the law but not do so blind to all attending circumstances.

**28.22** It has been jointly suggested that the existing mechanism of a "*Surety Information Management System*" (SIMS) be further developed and implemented. Also, the amicus suggests that the High Courts design and implement their own infrastructure portals for verification of sureties. We are of the view that if such a portal exists, it would only be in the best interest of all stakeholders if the same is used as best possible to have an integrated Data Management System within the criminal justice machinery of the country.

**28.23** The Union of India has suggested that foreign nationals involved in repeated offences of narcotics-related cases be blacklisted and deported. We cannot accept this suggestion. There are processes in place whereunder each and every individual case, either for blacklisting or deportation, has to be considered. No individual can be condemned without the due process of law.

**28.24** Another suggestion by the Union of India is that the Embassy or Consulate of the country of origin of the foreign national accused shall provide an undertaking to the Court that the said accused is a citizen of their country. We find no merit in such a suggestion in view of the involvement of, and implications for, international relations.

**28.25** A suggestion has been made to the effect that information across entities such as UIDAI, M-Parivahan, Land Registry Records, MoRTH be maintained online and be accessible for real-time verification of sureties. In our view, such a direction would be too wide.

**28.26** Regarding the issue of sureties, both personal and professional, a specific form has been suggested by the parties specifically dealing with offences under the NDPS Act and the offences having been committed by foreign nationals. It is necessary that all relevant details regarding nationality; visa; quantity involved be stated, and records with respect thereto, be maintained across levels, ensuring that there is verification and application of mind by authorities at multiple levels. The proposed Form47-A as modified by us is reproduced hereinbelow:

"BOND AND BAIL-BOND FOR ATTENDANCE BEFORE OFFICER IN CHARGE OF POLICE STATION OR COURT (FOR FOREIGN NATIONALS

IN NDPS CASES – COMMERCIAL QUANTITY)
(See Sections 478, 479, 480, 481, 482(3) and 485)

I, __________(Full Name of Accused), Nationality:__________, Passport No.(date of issuance and date of expiration):________________, Issued by: ____________(Country name), Visa Details:__________(date of issuance and date of expiration), Resident of:_______________ (Complete Permanent Address Abroad), currently residing at _________ (Complete address in India) and Contact Details i.e., Phone No.________________, having been arrested or detained without warrant by the Officer-in-Charge of __________________Police Station/Investigating Authority, (or having been brought before the Court of ___________________), and having been charged with the offence under Section(s) __________________of Narcotic Drugs and Psychotropic Substances Act, 1985 involving __ substance and being a commercial quantity of ___ weight, and being required to give security for my attendance before such Officer or Court that I shall attend before the said Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default on the aforestated condition or the requirements of the undertaking annexed herewith, I bind myself to forfeit to the Government a sum of Rs. ____________/- (Rupees _________________only).

I will abide by my undertaking which annexed hereto as Annexure – I.

Dated this __________ day of____________, 20_____.

(Signature)"

Annexure I
UNDERTAKING BY THE ACCUSED

I, __________(Name of Accused), S/o / D/o / W/o _________, Resident of:_______________ (Complete Permanent Address Abroad), currently residing at _________ (Complete address in India) Contact Details i.e., Phone No. ________________, having Passport No. (date of issuance and date of expiration): ________________, Issued by: ____________(Country name), Visa Details:__________(date of issuance and date of expiration), having been arrested or detained without warrant by the Officer- in-Charge of __________________Police Station, (or having been brought before the Court of ___________________), and having been charged with the offence under Section(s) __________________of Narcotic Drugs and Psychotropic Substances Act, 1985 involving __ substance and being a commercial quantity of ___ weight, and having been directed to be released on bail upon execution of bail bond, do hereby solemnly undertake as under:

1. That I shall appear before the Investigating Officer of the concerned agency and/or the Hon'ble Court on each and every date of hearing, inquiry, investigation, or trial, as directed, unless specifically exempted by a written order of the Court, and that I shall remain available to the Investigating Agency and the Court at all times during the pendency of the proceedings and shall not abscond or evade the process of law.

2. That I shall strictly comply with all the terms and conditions of bail imposed by this Hon'ble Court or by any authority competent under law, and shall not leave the territory of India or the jurisdiction as specified by the Court in its order, without prior permission of this Hon'ble Court.

3. That I shall provide my residential address and mobile number to the Hon'ble Court and the Investigating Officer, and shall not change my place of residence and mobile number without obtaining prior permission, and that I shall promptly inform the Court, the Investigating Officer of the concerned agency, and the concerned Embassy, of any change in my residential address, mobile number, or other contact details.

4. That I shall report periodically to the concerned Police Station, FRRO or Embassy or any other authority, as may be directed by this Hon'ble Court from time to time.

5. That I shall, within the time granted by this Hon'ble Court, file an affidavit disclosing my source of funds, income, and particulars of bank accounts, if any, operated by me in India, and shall cooperate in any lawful verification thereof. The same shall be communicated to the concerned Investigation agency.

6. That I shall not directly or indirectly induce, threaten, or promise any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Investigating Officer of the concerned agency or, nor shall I tamper with the evidence or interfere with the course of justice in any manner whatsoever.

7. That I shall not commit any offence, of similar nature, during the pendency of the present case and shall conduct myself in a lawful and responsible manner.

8. That I understand and undertake that in the event of breach of any of the conditions of this undertaking or the bail bond, I shall be liable for forfeiture of the bond amount to the Government and a ground for cancellation of bail.

I make this undertaking voluntarily, consciously and without any coercion, fully understanding the legal consequences thereof.

(Signature)"

SURETY BOND

IN THE COURT OF ___________________________
Case / FIR No.: ___________________
Police Station: ___________________
Offences under: ___________________
State vs. _________________________

I, ____________(full name of Surety as per Adhaar Card), S/o / D/o /
W/o __________, aged about ___ years, do hereby solemnly affirm and declare as under:

1. I offer myself as Surety for _________________________ (name and particulars of the accused), who has been charged under Section(s) _________________________ of Narcotic Drugs and Psychotropic Substances Act, 1985 involving __ substance and being a commercial quantity of ___ weight, and who has been directed to be released on bail vide order/judgment dated ___________ passed by the Hon'ble __________________ Court, upon furnishing bail bond in the sum of Rs.
___________/- (Rupees _____________only) with _________surety/sureties in the like amount.

2. That my particulars are as under: -
a) Permanent Address: _________________________
b) Present Address (if different): _________________________
c) Occupation: _________________________
d) Employer details (if in service):
Name & full address of employer:
_______________

OR

Details of Place of work and Business Name, if self-employed: ______
e) Aadhar Card No. ______________
f) Passport No. (if any)_________
g) Immovable property owned (if any): Location, approximate value, share/interest,

and encumbrances: ___________________
h) Bank Account(s) details:
Name of Bank & Branch: __________________________
Account Type & last balance: __________________________
i) Relationship with the accused:
☐ Family Member ☐ Friend ☐ Other: __________________
j) Duration of personal acquaintance with accused: __________
k) Whether you have stood surety in any other case/s, if any:
l) ☐ No ☐ Yes (details of accused, case no., court & amount):
m) Whether any surety bond executed by me has ever been forfeited:
☐ No ☐ Yes (details of accused, case no., court & amount): ______________
n) Whether any application for suretyship by me was rejected earlier:
☐ No ☐ Yes (details of case no., court & amount along with reason rejection):_________
o) Whether you have ever been accused/convicted in any criminal case:
☐ No ☐ Yes (details): __________________________
p) Any other relevant particulars regarding income/assets including liabilities (for example loans, mortgages, personal guarantees, insolvency or bankruptcy proceedings): _____________________

3.Documents Filed:

| S. No. | Documents to be furnished (No. 1, and any 2 documents from documents No.2 to 5 |
|---|---|
| 1. | Aadhaar Card (along with locker copy) |
| 2. | PAN Card, if any (along with Digi locker copy) |
| 3. | Passport if any (along with Digi locker copy) |
| 4. | Driving license, if any (along with Digi Locker copy) |
| 5. | Water Bill of residence<br>Or<br>Electricity Bill of residence<br>Or<br>Rent Agreement, if living on rent<br>Or<br>Proof of Gas Connection at residence |
| 6. | Income Tax Assessment Order for 2 previous financial years (if any) |
| 7. | Form 16 A Certificate of TDS, if employed |
| 8. | Bank Account statement under the name and seal of the concerned bank manager or authorised officer thereof |
| 9. | Coloured Passport Size Photograph (taken not less than one week prior to giving surety) |

4. I am an Indian citizen permanently residing in India.

5. I shall ensure the presence of the accused before this Hon'ble Court as and when required.
6. I undertake to immediately inform the Court if I learn that the accused is attempting to abscond or is acting in violation of any bail condition/s.
7. I consent to verification of my identity, address, and financial capacity, including bank accounts, fixed deposits, and property records.
8. I consent to the creation of lien for the surety amount on the money instrument or property either immovable or movable, furnished by me at the time of standing surety.

I hereby bind myself to the Government to pay the sum of Rs. ________/
(Rupees _________________only) in the event of forfeiture under Section 491 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

(Name & Signature of Surety)

VERIFICATION

Verified at ________ on this ___________ day of _______, that the contents of the undertaking are true and correct to the best of my knowledge and nothing material has been concealed therefrom, no part of it is untrue.

(Name & Signature of Surety)

Identified by:___________
Name & Signature of the Advocate:_________________________

Date:_____________
Place:____________"

## Directions

**29.** Having considered the entire material placed before us and given our anxious consideration to the suggestions made by all, including the Union of India and the learned *amicus curiae*, we deem it appropriate to issue the following directions, applicable in cases involving ***(a)*** a foreign national; and ***(b)*** an accused in a case involving commercial quantity under the NDPS Act:

***(i)*** The passport of the accused foreign national shall be deposited with the jurisdictional Court. Concomitantly, the Court may place a restriction upon the accused's ability to travel outside the country without its prior permission;

***(ii)*** The accused so released on bail shall register within one week of release with the Foreigners Regional Registration Office (FRRO) and inform, in writing to the investigating officer as also the concerned Court of having made such registration;

***(iii)*** The FRRO, in consultation with the relevant departments of the Government, shall cause to be made and implemented a portal for the purpose of direction no.*(ii)*;

***(iv)*** An accused foreign national shall mandatorily produce two sureties of like amount to secure bail. If the concerned Court is of the considered view, upon it being so demonstrated to them, that despite sufficient effort it has become difficult/impossible to secure two sureties, the concerned Court may relax this condition by way of a written order recording reasons;

***(v)*** The process of verification of sureties shall, in all cases, be done within 3 days, and the verification report be placed before the Trial Court prior to the release of the accused. If this timeline is not followed, the reasons therefor be recorded and brought to the notice of the concerned Court;

***(vi)*** Even if the residential address of the accused and, other contact information etc., within India was verified during the course of investigation, the same shall be re-verified, physically, within three days of the order of granting bail but prior to the completion of the process of the accused being released on bail;

***(vii)*** The accused foreign national shall file before the concerned Court, an affidavit indicating their source of income/funds within India and also give details of all bank accounts, if any, in the country;

***(viii)*** The concerned Investigating Officer shall, through written communication, inform the Embassy of the country of origin of the accused of their involvement in the alleged crime;

***(ix)*** The Ministry of Law and Justice along with the National Informatics Centre shall create a centralised database wherein all particulars of each individual, both accused and as well as those who stand as a surety for foreign nationals accused in NDPS cases, shall be entered;

***(x)*** When sureties, purportedly verified, are later discovered to be fake, all officials concerned (Police, Court officials and Revenue officials) with the verification process shall face a departmental inquiry for dereliction of duty. The Ministry of Home Affairs, Government of India, and its counterparts in the States shall issue necessary guidelines for the departments concerned to proceed against erring officials;

***(xi)*** When a person stands as surety in favour of a foreign national accused, a *lien/charge* equal to the amount of the surety bond be created on their property in any form, including immovable property. In case of violation of the condition imposed, the concerned Court may, in the attending facts and circumstances of each case, direct the realization of such *lien.*

***(xii)*** All High Courts through their respective IT Committees shall take steps to implement the creation of a digital portal through which speedy verification and authentication of documents such as property and finance can be carried out. The High Court of

Karnataka, as already observed *supra,* has taken steps in this regard. Perhaps they're worth emulating.

***(xiii)*** An additional form to be numbered as Form-47A, as reproduced in the preceding section (para 28.26) to be inserted after Form 47 of BNSS 2023.

**Suggestions**

**30.** We have, above, issued several directions. There are yet some other aspects which we find to be deserving consideration by the relevant authorities and taking steps in pursuance thereof as may be warranted. The following are those suggestions:

**(i)** True it is that the co-ordinate Bench of this Court in ***Moti Ram*** (*supra*) the concept of professional sureties was equated with touts and looked at with a general view of disdain, however we are of the view that one of the hallmarks of the Indian Constitutional system is its openness to adopting evolved views and not being stuck to those taken in the past conditions upon the fact that the latter view is also firmly rooted in constitutional moorings. As such, in certain cases, possibly, professional sureties may be the only answer. We had asked Mr. Raju, learned ASG, and Mr. Luthra to explore this aspect. They have, after an in-depth study, informed us that as such no rules exist in this regard. In that view of the matter, they have furnished draft rules which we have studied, analysed and amended as is suitable, as given in ***Annexure I***.

The introduction of the professional bondsmen system can only be made, even for the limited purposes pertaining to foreign nationals in NDPS cases, after an in-depth study of all relevant laws, the socio-economic impact of professionalising the securing of liberty, and benefiting from a comparative perspective, etc. It may also be observed that when the rules were proposed by the learned *amicus* in consultation with the Union of India, the same contained not only individuals functioning as bail bondsmen, but also entities or limited liability partnerships functioning as bail bondsmen entities. That too, in our view, is a matter that requires in-depth consideration of all relevant factors, including adequate attention being paid to the positives and negatives in the context of the socio-legal milieu, of the corporatization of bail. The Executive must take a call on this issue.

***(ii)*** As a matter of ordinary practice, the physical verification of sureties is undertaken by the Investigating Officer, after which the surety and the relevant documents of the surety are produced before the Court for the satisfaction of the Magistrate. As per the report of the concerned judge, the established processes were followed here as well. But, clearly, there needs to be some change in the process. Possibly, each district Court may be provided with human resources specifically meant for this purpose. When these specifically designated persons undertake a verification, they shall make all practical attempts to join at least two independent witnesses in this verification;

***(iii)*** The relevant authorities of the Government as also the Court may take all steps to effectively develop Surety Information Management System (SIMS) as a paradigm across all States for effective storage and management of information;

***(iv)*** Ministry of Electronics and Information Technology may, if found feasible, after due consideration of this Court's judgments, *inter alia* ***K.S. Puttaswamy (supra),*** frame guidelines for implementation of geo-fencing technologies and also outline the kind of cases in which this method may be used.

***(v)*** The appellant, through the concerned Ministry, may make an application in the prescribed form to UIDAI to facilitate the use of Aadhaar authentication procedures for surety verification in terms of the Aadhaar Authentication for Good Governance (Social, Welfare, Innovation, Knowledge) Rules, 2020[95].

***(vi)*** The Ministry of Home Affairs may consider whether the NDPS Act, 1985, be included in the list of statutes mentioned under Section 129 of the BNSS 2023, whereby the Executive Magistrate may require an offender residing within the jurisdiction to execute a bond for good behaviour.

***(vii)*** Judicial Academies should provide training to judges/judicial officers regarding the interrelationship of social and economic realities, especially financial vulnerabilities, with access to justice, when it comes to surety-based bail.

**31.** Let a copy of this judgment be sent to the Secretary, Department of Law and Justice, Government of India, and to the Chief Secretaries of all the States and Union Territories for necessary follow-up action. Let the same also be sent to the Registrars General of the High Courts, who shall ensure its onward circulation to the Trial Courts for compliance.

**32.** Let a copy of this judgment also be sent to the Chief Justice, High Court of Judicature at Bombay, through the Registrar

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[95] SWIK Rules

General, and the DGPM, to determine action, if any, that needs to be taken against the officials of the concerned Trial Court, both judicial and administrative, as also the police officials involved in the verification of the fabricated sureties in the present case.

We place on record our appreciation for Mr. Suryaprakash V. Raju, learned A.S.G., Mr. Sidharth Luthra, learned senior counsel, and Ms. Sana Hashmi, AOR, learned *amici curiae,* Mr. Shadan Farasat, learned senior counsel, and all the other counsel who lent their able assistance to them, and thereby, to this Court.

We may add that Mr. Sidharth Luthra, has laboured and impressed upon us to direct the Rules (***Annexure A-I***) to be made mandatory. We have extensively dealt with the same. Record reveals that this Court has been continuously reposing immense faith upon him and calling him to assist as *amicus curiae* in several matters of great importance, including the Constitution Benches, since the year 2010.

**33.** The appeal is disposed of in the above terms. Pending application(s), if any, shall stand disposed of.

**..........................................J.**
**(SANJAY KAROL)**

**..........................................J.**
**(AUGUSTINE GEORGE MASIH)**

**NEW DELHI;**
**AUGUST 17, 2026**

# ANNEXURE I

# THE PROFESSIONAL BAIL BONDSPERSON (REGULATION) RULES, 2026

## OBJECTS AND AIMS

The National Legal Services Authority in exercise of its policy and scheme making powers under Section 4(a) and 4(b) of the Legal Services Authorities Act, 1987 is competent and with its nationwide network is capable of giving effect to a scheme to reform and regulate surety practices and to introduce a scheme for licencing and registration of Professional Bail Bondsperson throughout India. The core objectives of this Scheme are:

i. To institutionalise and regulate the role of professional bail bondsperson in India, and create a formal, legally recognized framework for professional bail bondsperson.

ii. To reduce incarceration post the order granting bail or suspension of sentence to an accused, that occurs strictly due to an accused's inability to furnish sureties.

iii. To ensure accountability, transparency, and professionalism in all bail surety services provided to the accused by bail bondsperson.

iv. To assist courts in the effective enforcement of bail or suspension of sentence conditions, thereby ensuring the accused's presence during proceedings.

v. To prevent the exploitation of accused persons and their families by unregulated or unscrupulous actors providing sureties to accused and curb the menace of fake sureties.

**CHAPTER I: PRELIMINARY**

**1. Short Title, Extent, and Commencement.**—

These Rules may be called the Professional Bail Bondsperson (Regulation) Rules, 2026.

**2. Definitions.**—

(1) In these rules, unless the context otherwise requires—

**(a) "Bail"** has the same meaning as in Sections 436, 437, 437A, 438 and 439 Code of Criminal Procedure, 1973 ("CrPC") and Sections 480, 481, 482, 483, 484 and 485 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") and "suspension of sentence" has the same meaning as in Section 389 of CrPC and Section 430 of BNSS or in any special or local law for the time being in force in India;

**(b) "Bond Amount"** and **"surety amount"** means the amount fixed by the police officer or court for bail and surety or "suspension of sentence", in terms of Sections 88, 389, 437, 437A, 438, 439, 441 of CrPC and in any provision for the grant of bail, by a Court or investigating officer, in any special or local law for the time being in force in India [Sections 91, 480, 481, 482, 483, 484, 485 and 487 of BNSS, 2023] and in any provision for the grant of bail or "suspension of sentence", by a Court or investigating officer, including in any special or local law for the time being in force in India;

**(c) "District Legal Services Authority"** shall mean the District Authority constituted under Section 9 of the Legal Services Authorities Act, 1987;

**(d) "License"** means a valid certificate granted under Chapter IV of this Scheme to a "Bail Bondsperson" who is registered with the State Bail Bondsperson Regulatory Authority;

**(e) "National Legal Services Authority (NALSA)"** shall mean the Central Authority constituted under Section 3 of the Legal Services Authorities Act, 1987;

**(f) "Professional Bail Bondsperson"** means any person registered under Chapter IV to carry out the activities of services of providing sureties for an accused and related activities as permitted under Chapter IV;

**(g) "State Legal Services Authority"** shall mean the State Authority constituted under Section 6 of the Legal Services Authorities Act, 1987;

**(h) "State Regulatory Authority"** shall mean the State Bail Bondsperson Regulatory Authority constituted under Rule 2 of this Scheme.

2. Words and expressions used but not defined in these regulations shall have the meanings respectively assigned to them in the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") or, as the context may require, the Code of Criminal Procedure, 1973 ("CrPC"); the Bharatiya Nyaya Sanhita, 2023 ("BNS") or, as the context may require, the Indian Penal Code, 1860 ("IPC"); the Bharatiya Sakshya Adhiniyam, 2023 ("BSA") or, as the context may require, the Indian Evidence Act, 1872 ("IEA"); and the Reserve Bank of India Act, 1934.

**CHAPTER II: SUPERVISORY MECHANISM**

**3. Role of National Legal Services Authority and State Legal Services Authorities.**—

a) NALSA shall be the nodal body for policy guidance, standard-setting, and training modules.
b) NALSA may issue model rules, ethical codes, and compliance standards and conditions for grant of license under Rule 8, 10 and 11. Such conditions shall be consistent with the BNSS or any other law for the time being in force in India.
c) National Legal Services Authority shall—
   i. Frame Standard Operating Procedures.
   ii. Maintain national digital infrastructure under the rules.
   iii. Coordinate with State Legal Services Authorities (SLSAs), District Legal Services Authorities (DLSAs), High Courts, Unique Identification Authority of India (UIDAI), National Informatics Centre (NIC), National Crime Records Bureau (NCRB) and State Police.
d) State Legal Services Authorities shall act as State Implementing Authorities, and District Legal Services Authorities shall act as District Verification Units.

**CHAPTER III: STATE BAIL BONDSPERSON REGULATORY AUTHORITY**

**4. Constitution of State Bail Bondsperson Regulatory Authority.**—

(1) Each State Government and Union Territory Administration shall, vide a notification, constitute a State Regulatory Authority consisting of the following members—
   i. A Chairperson being a person who has before his or her retirement, worked as a Judge of the High Court, to be nominated by the Chief Justice of concerned High Court;
   ii. A Vice-Chairperson being a person who has before his or her retirement from service, worked as a Sessions or Additional

Sessions Judge for at least 10 years in that State or Union Territory, to be nominated by the Chief Justice of concerned High Court;

iii. A police officer, nominated by the Director General of Police, not below the rank of Inspector General of Police or officer of equivalent rank in the State or Union Territory;

iv. A representative of the State Legal Services Authority, to be nominated by the Chairperson of the State Legal Services Authority;

v. A financial or compliance expert qualified and practising as a Chartered Accountant who has at least 20 years of experience in his field, and resides in that State/Union Territory, to be nominated by the Chairperson of the State Legal Services Authority; and

vi. Either a Social Worker with a minimum qualification of a Master's degree from a recognized University in India or overseas in social work, clinical psychology, criminology; or a Medical Doctor who has a Doctor of Medicine (MD) degree in Psychiatry from a recognized University in India or overseas, and with at least 20 years of experience in his/her field, and nominated by the Chairperson of the State Legal Services Authority.

(2) The tenure, terms and conditions of appointment and all other related matters shall be notified by NALSA in consultation with the respective State Government.

**5. Duties of the State Bail Bondsperson Regulatory Authority.**— It shall be the duty of the State Regulatory Authority to—

a) issue licenses to and register Individual Professional Bail Bondsperson upon receiving an application in the prescribed form in terms of Rule 10;
b) fix, modify, and publish the maximum service fees a bondsperson can charge;
c) adjudicate complaints in connection with the duties and responsibilities of bail bondsperson stipulated for them under these Rules;
d) cause an annual forensic audit of the fiduciary and collateral accounts of all licensed bondspersons under these Rules within the State at a time and date as may be prescribed as part of conditions of license; and
e) devise a mechanism, in consultation with the State Legal Service Authority for ascertaining suitability of an applicant to be a bail bondsperson.

**CHAPTER IV: LICENSING AND REGISTRATION**

**6. Mandatory licensing and prohibition of unlicensed activity.**—

a) No person shall act, advertise, or hold themselves out as a professional bail bondsperson unless licensed under these Rules.
b) Any act of executing or soliciting a bail bond without a valid license shall constitute an offence of cheating by personation and such other offences as may be applicable and punishable under the provisions of IPC or BNS and triable as per the provisions of CrPC or BNSS.

**7. Eligibility.**— An individual applying to secure a license for Bail Bondsperson under these Rules shall—

i. be a citizen of India;

ii. possess such educational qualifications and professional competence as may be prescribed by the State Regulatory Authority;

iii. be a solvent individual;

iv. be of sound mind; and

v. satisfy the Authority as to his or her integrity, reliability, and fitness to act as a professional surety;

8. **Disqualification.**—The following persons shall not be entitled to apply for license—

   i. Serving police officers, Serving prison officers, Serving judicial officers, Serving prosecutors, Serving court staff, or any other person exercising control over prisoners as may be prescribed by the NALSA;

   ii. persons convicted of an offence involving fraud, dishonesty, moral turpitude, or with any offence punishable with imprisonment of one year or more;

   iii. persons whose license has been previously revoked under these Rules; and

   iv. any other person or category of persons as may be declared to be unfit by the NALSA or State Legal Services Authority or State Regulatory Authority by notification.

9. **Procedure for making an application, examination and disclosure.**—

   (1) Every individual applicant seeking a license under these Regulations shall make an application to the State Regulatory Authority constituted for the State in which the applicant proposes to work as a professional bail bondsperson, in such

Form and with payment of such fee as may be prescribed, and every such application shall be accompanied by—

i. proof of identity and proof of residence of the applicant, established in such manner, and through such documents, as may be prescribed;

ii. a Police Verification Report, not older than ninety days from the date of the application, obtained from the jurisdictional police in respect of both the permanent address and the present address of the applicant, certifying *inter alia* that the applicant has not been convicted of, and is not undergoing trial in respect of any offence involving moral turpitude, fraud, coercion, extortion or violence;

iii. a full disclosure of all direct or indirect financial interests, in a manner prescribed by the State Regulatory Authority held by the applicant exceeding such threshold as may be prescribed, whether held in the applicant's own name or in the name of a spouse, dependant, nominee or other person on the applicant's behalf, together with a statement of the source of each such interest; and

iv. such solvency certificate from respective bank, statement of assets and liabilities, or return of income, as may be prescribed, to enable the State Regulatory Authority to assess the financial standing of the applicant.

Provided that—

  i. the solvency certificate shall be signed and sealed by the manager of the bank branch issuing the certificate and countersigned by an officer not below the rank of Regional Head or its equivalent,

  ii. the State Regulatory Authority may, by general or special order, require an applicant to furnish such further information, document or clarification as it may consider necessary for the proper disposal of the application, and the application shall not be treated as complete until such requirement is complied with.

(2) Any material misrepresentation made, or any suppression of a material fact, in or in connection with an application under this rule shall;

(a) where the license has not yet been granted, render the application liable to rejection; or

(b) where a license has already been granted, render such license liable to cancellation,

and shall, in either case and in addition, render the applicant liable to criminal prosecution under the relevant provisions of the BNS.

**Explanation**— For the purposes of this sub-rule, a fact shall be deemed to be "material" if its disclosure would reasonably have affected the decision of the State Bail Bondsperson Regulatory Authority to grant, to refuse, or to impose conditions upon, the license.

**10. Registration.—**

(1) Once compliance with the Regulations provided for herein is established and verified along with other conditions as may be prescribed by the State Regulatory Authority , such Authority shall issue to each individual bail bondman a Unique Surety License Number (USLN);

(2) Each Bail Bondsperson having USLN issued hereinunder, shall provide such number in each surety form signed by them. Such forms are enclosed as Annexure II.

**11. Security bond, guarantee and fiduciary accounts.—**

(1) Every Licensed Professional Bail Bondsperson must furnish and maintain, in favour of the State Regulatory Authority, a continuous Bank Guarantee or an insurance-backed instrument of a value of which may be decided by the State Regulatory Authority in consultation with the Chairperson of State Legal Services Authority and in recognition of socio-economic conditions prevailing in the State/Union territory; such guarantee or instrument shall remain valid and subsisting, throughout the period of the license and for such further period after the expiry, surrender or cancellation of the license for the satisfaction of any subsisting liability, as may be prescribed.

(2) All premiums, fees, collateral or other monies received by a Licensed Professional Bail Bondsperson in connection with any bail bond shall be held in a fiduciary capacity, in one or more segregated accounts maintained with a scheduled bank exclusively for that purpose, and shall not at any time be commingled with the personal or business funds of the bondsperson.

(3) Every Licensed Professional Bail Bondsperson, shall execute and file, along with every bail bond submitted to the Court, a mandatory affidavit declaring that no illegal gratification, kickback, commission or referral consideration has been paid, given, offered or promised, directly or indirectly, to any police officer, jail or prison authority, member of the staff of any Court, or legal practitioner, in connection with the procurement, negotiation or execution of the bond.

(4) Failure to furnish or to maintain the security required under sub-rule (1), or to maintain the fiduciary accounts required under sub-rule (2), shall render the license liable to suspension, without prejudice to any other action that may be taken under these Rules.

**12. National Digital Surety Registry of Licensed Bail Bondsperson.**—

(1) National Legal Services Authority shall maintain a National Digital Surety Registry containing:

i. Identity details of registered Bail Bondsperson under these Rules;

ii. Details of the sureties furnished by the said bail bondsperson;

iii. Instances of forfeiture or default;

iv. List of blacklisted or suspended Bail bondsperson.

(2) The information maintained in the Registry by the National Legal Services Authority shall be made accessible to all Courts, and to every State Bail Bondsperson Regulatory Authority, in such manner and subject to such safeguards for the protection of personal data as may be prescribed.

**CHAPTER V: DUTIES AND OBLIGATIONS OF BAIL BONDSPERSON**

**13. Duties of Professional Bail Bondsperson.**—Every licensed professional bail bondsperson shall—

(a) ensure the appearance of the accused before the court all dates as may be required, and take all reasonable steps for that purpose;

(b) explain the conditions of the bail to the accused in a language understood by the accused, and obtain an acknowledgment to that effect in the language of the accused and of which he/she comprehends the meaning thereof;

(c) comply strictly with conditions imposed under the CrPC, BNSS or any other special law that might be applicable and with every direction issued by the Court;

(d) maintain accurate, contemporaneous, and verifiable records of all bonds executed;

(e) maintain records of any expenses along with verifiable bills incurred in performing duties accrued upon him;

(f) promptly inform the court and investigating agency of any apprehended breach of bail conditions and of any change in the circumstances of the accused that comes to the knowledge of the bondsperson;

(g) at the time of executing any bond, the bondsperson must issue a declaration that they have no familial, professional, or financial conflict of interest with the presiding judge, the prosecutor, or the investigating officer of the concerned police station;

(h) any further duties that may be prescribed by National Legal Services Authority, State Legal Services Authority or State Regulatory Authority.

(i) not charge fees outside this authorised schedule.

*Provided* that this will not limit the bondsperson from taking adequate or such security as deemed appropriate from the accused or convict, to secure his or her control on the accused seeking their services

**14. Prohibited conduct of Professional Bail Bondsperson.**—No bail bondsperson shall—

i. detain, confine, or physically restrain any accused;

ii. impersonate or represent themselves as a public authority;

iii. solicit business within court premises or places of detention;

iv. offer or give any inducement, rebate, or consideration to secure bail business;

v. recommend or influence the choice of advocate/legal advisor;

vi. advertise in a false, misleading, or deceptive manner or suggest governmental affiliation.

vii. execute aggregate outstanding bail bonds exceeding five times the verified value of their solvency certificate or financial assets.

**Explanation**— Any contravention of this rule shall constitute misconduct, and shall be a ground for suspension or cancellation of the license under Chapter VII, without prejudice to any criminal liability that may be incurred.

**15. Regulation of fees and premiums.**—

a) No bail bondsperson shall charge or collect any fee, premium, or service charge except in accordance with rates approved by the State Bail Bondsperson Regulatory Authority and published in such manner as may be prescribed.

b) The licensed bail bondsperson may hold an instrument or property, in trust, in lieu of fees approved by the State Bail Bondsperson Regulatory Authority, until the realisation of such fees, but shall not deal with or dispose of such instrument or property save for the purpose of such realisation after taking due permission of the Court.

c) Every fee, premium or service charge shall be disclosed in writing to the accused or the indemnitor prior to the execution of the bond, and a receipt shall be issued in respect of every sum so received.

**16. Collateral and security.**—

a) Collateral accepted by a Bail Bondsperson or a Bail Bond Business Entity shall be proportionate to the bond amount.

b) Transfer of title of movable or immovable property as a condition for bail is prohibited.

c) Collateral shall be held in trust and returned immediately upon discharge or exoneration of the bond together with any document of title or instrument deposited in connection therewith.

**17. Liability, forfeiture and recovery.—**

a) Forfeiture of bail bonds shall be governed by the provisions of the BNSS or CrPC.

b) Any recovery from the accused or the indemnitor shall be limited to the amount of the bond, together with such reasonable and documented expenses as may have been actually and necessarily incurred, and shall not include any penal or speculative charge.

**CHAPTER VI: SPECIAL PROVISIONS FOR FOREIGN NATIONALS**

**18. Special provisions for foreign nationals.—**

a) No bail bond in respect of an accused of a non bailable offence, who is a foreign national, shall be executed by a Licensed Professional Bail Bondsperson save with the express permission of the concerned Court accepting bail and surety bonds.

b) A bondsperson furnishing surety for a foreign national shall ensure that the accused:

  a) registers with the Foreigners Regional Registration Officer (FRRO) within one week of release; and

  b) deposits his/her passport with the Court.

c) Where a professional bond is issued in respect of an accused who has been flagged as a flight risk, the FRRO shall be notified through the portal so as to suspend the passport or other travel documents of such accused, and to place him or her on a look-out circular, thereby preventing cross-border escape.

**CHAPTER VII: SUSPENSION, CANCELLATION AND DISCIPLINARY MECHANISM**

**19. Grounds for suspension or cancellation.**—

a) A license may be suspended by the State Regulatory Authority if a bondsperson commits fraud, engages in coercive practices, or repeatedly incurs bond forfeitures;

b) Upon receipt of a complaint from an aggrieved accused or upon intimation of irregularity from the concerned Court, the State Bail Bondsperson Regulatory Authority shall issue a show-cause notice to the erring bondsperson, suspending their license during the pendency of the inquiry.

c) If a bail bondsperson suffers the suspension of their license on three or more occasions, the State Regulatory Authority shall after conducting comprehensive review of the instances for suspension of license, if deemed fit, initiate processes for cancellation thereof.

**20. Disciplinary Proceedings.**—

a) State Regulatory Authority shall initiate an inquiry, with due regard to the principles of natural justice, where it is alleged that the bondsperson has committed fraud, misrepresentation, or financial impropriety; engaged in coercive or unethical practices; repeatedly incurred bond forfeitures; or violated court directions or any Rules framed under these regulations.

b) Where a license has been suspended without hearing the licensed bondsperson, the State Regulatory Authority must conduct a mandatory review hearing within seven (7) days of the suspension to evaluate the necessity of the continuation of the suspension.

c) Any disciplinary action taken against professional bondsperson under this Chapter shall operate without prejudice to concurrent criminal prosecution under the BNS, 2023

**CHAPTER VIII: MAINTENEANCE OF RECORDS**

**21. Record-keeping.**—Every Licensed Professional Bail Bondsperson shall preserve all records, including copies of executed bonds, client files and verification disclosures, at a secure place for such period as may be prescribed, and shall be obliged to produce such records as and when required under these Rules.

**22. Audit and inspection.**—The State Bail Bondsperson Regulatory Authority may, through any officer authorised by it in this behalf, conduct inspections and audits of any Licensed Professional Bail Bondsperson, and every such bondsperson shall afford to the authorised officer all reasonable facilities and access to records for the purpose of such inspection or audit.

**23. Regulation not in derogation of any other law.—**The provisions of this Regulation shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

## SURETY BOND

**IN THE COURT OF ___________________________**

Case / FIR No.: ___________________
Police Station: ___________________
Offences under: ___________________
State vs. _________________________

I, ____________(full name of Surety as per Surety License**)**, S/o / D/o / W/o __________, aged about ___ years, Permanent Address: ________, Present Address: _____________, having Surety License No.: _______________, valid from ___ to ____ Mobile No.: _____________, Email ID: ___________________, do hereby solemnly affirm and declare as under:

1. I offer myself as Surety for _________________________ (name and particulars of the accused), who has been charged under Section(s) _________________________, and who has been directed to be released on bail vide order/judgment dated ___________ passed by the Hon'ble __________________ Court, upon furnishing bail bond in the sum of Rs. ___________/- (Rupees _____________only) with _________surety/sureties in the like amount.
2. That my particulars are as under: -
   a. **Permanent Address:** _________________________

b. **Premium/Service Fee Charged:** Rs. ____________/- (Conforming to rates approved by the State Bail Bondsperson Regulatory Authority)

c. **The Details of Collateral Accepted (Held in Trust):**

Description of Instrument/Property: ______________________

Approximate Value: Rs. ____________/- *(Proportionate to the court-mandated bond amount)*

d. **Bank Account(s) details:**

Name of Bank & Branch: __________________________
Account Type & last balance: __________________________

e. **Details of all other case/s, where the Licensed Bondsperson has stood surety:**

i.
ii.

f. **Whether any surety bond executed by me has ever been forfeited:**

☐ No ☐ Yes (details of accused, case no., court & amount): ______________

g. **Whether any application for suretyship by me was rejected earlier:**

☐ No ☐ Yes (details of case no., court & amount along with reason rejection):_________

h. **Whether the I have been a party to insolvency/bankruptcy proceedings:**

☐ No ☐ Yes (details): __________________________

i. **Whether the I have ever been accused/convicted in any criminal case:**

☐ No ☐ Yes (details): __________________________

m. **Any other relevant particulars regarding income/assets:**

_____________________

**n.** Documents Filed:

| S. No. | Documents to be Furnished (Documents No.4 only required when the accused is a foreign national) |
|---|---|
| 1. | License issued under the Professional Bail Bondsperson (Regulation) Rules, 2026 |
| 2. | Aadhaar Card (along with Digi locker copy) |
| 3. | Bank Account statement certified by concerned bank manager (Scheduled Public Sector Banks, Scheduled Private Sector Indian Banks and Cooperative bank or Regional Rural Banks) |
| 4. | Court Order granting permission to execute this Professional Bond *[Only applicable for Foreign National]* |

**o.** I declare that no illegal gratification or unauthorized consideration outside the regulated fee structure in terms of the Professional Bail Bondsperson (Regulation) Rules, 2026 has been exchanged for standing as professional surety.

**p.** I declare that I have no familial, professional or financial conflict of interest with the presiding judge, the prosecutor or the investigating officer of the case in which the accused has been charged.

**q.** I shall ensure the presence of the accused before this Hon'ble Court as and when required.

**r.** I undertake to immediately inform the Court if I learn that the accused is attempting to abscond or is acting in violation of any bail condition/s.

**s.** I consent to verification of my identity, address, and financial capacity, including bank accounts, fixed deposits, and property records.

**t.** I consent to the creation of lien for the surety amount on the money instrument or property either immovable or movable, furnished by me at the time of standing surety.

I hereby bind myself to the Government to pay the sum of **Rs. ________/** (Rupees _________________**only**) in the event of forfeiture under Section 493 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

(Name & Signature of Surety)

**VERIFICATION**

Verified at ________ on this ___________ day of _______, that the contents of the undertaking are true and correct to the best of my knowledge and nothing material has been concealed therefrom, no part of it is untrue.

(Name & Signature of Surety)

Identified by:___________

Name & Signature of the Advocate:_________________________

Date:_____________

Place:____________