

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No. 9/2023

Amir Khan

.....Appellant(s)/Petitioner(s)

Through: Mr. Prince Khanna, Advocate &
Mr. Sahil Bhardwaj, Advocate

Vs

UT of J&K and anr.

..... Respondent(s)

Through: Mr. Eishan Dadhichi, GA

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER (ORAL)

21.12.2023

1. The applicant figures as one of the accused in charge sheet titled, '*UT of J&K vs. Gulzar Ahmed & Ors*' arising out of FIR No. 24/2021 under Section 8/15/29 NDPS Act registered with Police Station, Batote. After dismissal of the application seeking bail by the court of learned Sessions Judge, Ramban (hereinafter to be referred as 'the trial court'), the applicant has approached this Court for grant of bail on the ground that the applicant has been in custody since June, 2021 despite the fact that no incriminating material/contraband was recovered from the applicant and the applicant has been roped in as accused only with the aid of Section 29 of NDPS Act, as on 28.03.2021 while checking the truck bearing Registration No. HP11C 9025, which was being driven by one of the accused, namely, Gulzar Ahmed, the poppy straw weighing 1 Kg was recovered from the truck. Noor Mohd. was working as a helper with the main accused and the vehicle was intercepted while it was proceeding

from Srinagar towards Pathankot. It is further averred that no material has been placed on record by the prosecution to substantiate the charge against the applicant that he was part of conspiracy with the other accused for the purpose of transporting the alleged contraband and the applicant has been merely arrayed as accused on the basis of suspicion of some phone calls, which were made to the accused, namely, Gulzar Ahmed from the mobile number of the applicant.

2. Objections stand filed by the respondents, stating therein that on 28.03.2021, a docket was received through Sg. Ct. Nasir Ali from ASI Vijay Kumar, stating therein that ASI Vijay Kumar along with the police officials Sg. Ct. Nasir Ali, Sg. Ct. Prem Chand and Constable Sunil Singh had laid a naka at Nashri Check Point. One truck bearing Registration No. HP11C/9025 coming from Srinagar and heading towards Jammu-Pathankot was stopped at around 15:00 hours. During checking of the said truck, 21 polythene bags of green colour containing poppy straw like substance were recovered from the vehicle. On questioning, the driver of the vehicle disclosed his name as Gulzar Ahmed and the conductor of the vehicle disclosed his name as Noor Mohd. On receipt of this information, FIR bearing No. 24/2021 under Sections 8/15/29 NDPS Act was registered with Police Station, Batote. During the course of investigation, the accused-driver and the conductor of the vehicle disclosed that the owner of the vehicle, namely, Rustam Khan, Amir Khan and Ghulam Rasool remained in contact with them and Javed Kashmiri. On their directions, Javed Kashmiri came with the consignment of Bhukki and filled the consignment of bhukki in the cavity made in the truck. Later, the

police arrested Rustam Khan and Amir Khan from Himachal Pradesh. Rustam Khan managed to escape from the police custody and in this regard, case FIR No. 38/2021 under Sections 224/332/353/186 IPC was registered. Amir Khan was also questioned, who confessed his involvement and disclosed the involvement of Rustam Khan, Ghulam Rasool and Javed Kashmiri in the instant case. CDR/SDR records of accused persons were obtained and later, the accused namely, Ghulam Rasool was also arrested in the said case. Offence under Section 25/60(2) NDPS Act was also added in the instant case. After the completion of investigation, the charge sheet was laid against the accused persons.

3. Mr. Sahil Bhardwaj, Advocate argued that no recovery has been made from the applicant and the applicant has been arrayed as accused solely on the basis of some phone calls between the applicant and the driver of the vehicle, namely, Gulzar Ahmed. Mr. Sahil Bhardwaj, Advocate has placed reliance upon the judgment passed by this Court in case titled, **‘Mohd. Ashraf Sheikh vs. UT of J&K’** reported in **2022(1) J.K.J. 32**.
4. Per contra, Mr. Eishan Dadhichi, learned Government Advocate argued that the call detail reports clearly demonstrate that the applicant was in touch with the main accused and as the quantity of the contraband is the commercial quantity so the applicant is not entitled to bail.
5. Heard learned counsels for the parties and perused the record of the trial court.
6. A perusal of the record would demonstrate that the applicant has been charged for commission of offence under Section 8/15/25/29 NDPS Act. It is also evident from the record that no contraband has been recovered

from the applicant and the applicant has been roped with the aid of Section 29 of the NDPS Act on the ground that he was in contact with Gulzar Ahmed on his mobile phone. After examining the record of the trial court, this Court finds that CDRs on the basis of which the applicant has been roped as accused with the aid of Section 29 of NDPS Act, do not form part of the charge sheet and in the list of documents as mentioned in the charge sheet, the CDRs are not mentioned. In case titled, '**Mohd. Ashraf Sheikh vs. U.T. of J&K**' 2022(1) J.K.J. 32, after taking note of the judgment of the Hon'ble Supreme Court, this Court had observed as under:-

"14. Thus, the Court while considering bail application in matters, where section 37 NDPS has its application, can simply look in to the material on record but cannot critically evaluate the same so as to find out the sufficiency of the material to detain the accused. Examining the case of the petitioner on touch stone of law laid down by Apex Court, this Court finds absence of any material evidence against the petitioner connecting the petitioner with the commission of offence for which he has been arrested as it is not forthcoming from the record or from the statement of any witness that petitioner has abetted the commission of offence or has been part of conspiracy to commit any offence under the Act. More so, the prosecution has not placed on record anything to demonstrate that the petitioner herein is earlier involved in similar type of offences as such this court is of opinion that the petitioner is not likely to commit such offence in future."

7. So far as the instant case is concerned, this Court has not come across any material evidence against the applicant connecting with the commission of offence for which he has been arrested. Also, the prosecution has not placed on record anything to demonstrate that the applicant was earlier involved in the similar type of offence. This Court is of the considered view that the applicant has satisfied the requirements of Section 37 of NDPS Act for grant of bail. The applicant was arrested on 12.06.2021 and the prosecution has not been able to conclude the evidence and the period

of incarceration is also one of the factors that shifts the scale in favour of the applicant for grant of bail.

8. As such, it is directed that the applicant be released on bail, subject to the following conditions:

- (i) subject to furnishing of two solvent sureties to the tune of Rs. 50,000/- to the satisfaction of trial court and personal bond of like amount.
- (ii) he shall not make any attempt to contact with any of the prosecution witnesses during bail either physically or through any other mode.
- (iii) he shall appear before the learned trial court as on all date of hearings.
- (iv) he shall not leave the territorial jurisdiction of UT of Jammu & Kashmir without prior permission of this Court.

9. Any observation made in this order is solely for the purpose of deciding the bail application and shall have no bearing upon the merits of the case.

10. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
21.12.2023
Neha-II

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No