

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

Bail Appl. No. 29 /2023

*Reserved On : 11.12.2023
Pronounced On: 30.12.2023*

1. Bilal Ahmed Sheikh (aged 30 Yrs.)

S/O Jan Mohd. Sheikh

Through his wife Fozia Bilal

R/O Syed Sahab Rajouri Kadal Srinagar

.....Applicant (s)

Through: Mr.Sheikh Hilal ,Adv.

Versus

1. Union Territory of J&K through

Police Station Nowhatta Srinagar

.....Respondent(s)

Through: Mr.Sajad Ashraf Mir, GA

CORAM: HON'BLE MR JUSTICE M.A.CHOWDHARY, JUDGE

JUDGMENT

1. Through the medium of this application in terms of Section 439 of the Criminal Procedure Code the applicant-Accused seeks grant of bail in case FIR No. 46/2020 registered at Police Station Nowhatta under Sections 8/21/22/29/27-A NDPS Act regarding which charge sheet has been sub judice before the court of learned trial Court.
2. The brief facts of the case are that on 08/10/2020 the Police Station Nowhatta received a written docket from SI Tariq Ahmad No. 39/PL Camp Islamia College, to the effect that he alongwith police party of Police Station Nowhatta while patrolling duty, checked

one vehicle i-10 bearing registration No. UP14HT-5312 which was parked on the road side and the driver of the vehicle while seeing the police party tried to run away alongwith the vehicle but the driver alongwith vehicle was tactfully stopped by the police party; that on preliminary inquiry the driver disclosed his particulars as Bilal Ahmad Sheikh @ Bill Don S/O Late Jan Mohd. Sheikh R/O Syed Sahib Rajouri Kadal Nowhatta Srinagar. During his personal search Spasmo-Proxyvon plus 02 strips each strip containing 24 capsules (total 48 capsules), Indian currency Rs. 2090/- Samsung mobile phone A50 and driving licence of one Tufail Manzoor S/O Manzoor Ahmad Chota R/O New Colony Lalbazar were recovered from his possession. While conducting search of the vehicle 23 strips of Spasmo-Proxyvon plus each strip containing 24 capsules (total 552 capsules) were recovered from the vehicle, which were concealed under the driver seat. The applicant was going to sell drugs to the youth of the area on high rates.

3. The accused was arrested after lodging of FIR No. 46/2020 for the offences U/S 8/21/22/29/27-A NDPS Act. The recovered capsules were seized and sample thereof was sent to the FSL Srinagar, for its examination. After completion of the investigation offences under Sections 8/21/22/29/27-A of the NDPS Act were found established against the petitioner and the challan was laid before the trial Court.
4. Objections have been filed by the respondents. While opposing the bail application of the applicant-accused, it is contended that accused Bilal Ahmed Sheikh was in the business of selling

narcotics in the area of Nowhatta Srinagar and its adjoining areas. It has been stated that the applicant-accused is not entitled to the concession of bail, as the rigors of Section 37 NDPS Act are applicable in the present case.

5. Learned counsel appearing for the applicant argued that the embargo contained under Section 37 of the NDPS Act is not applicable in the present case because neither the percentage of the narcotics in the FSL report was given by the respondent nor the capsules allegedly recovered from the possession of accused has been included in the seizure memo by the police. Learned counsel for the applicant-accused further argued that the number of capsules that will establish whether the recovery of narcotic substance effected from the applicant falls is small, intermediate or commercial quantity, but it is only the weight of narcotic substance which determines the quantity. Ld. Counsel for the applicant has placed reliance on law laid down in ***Bharat Chaudhary Vs. Union of India reported as Live Law 2021 SC 733.***

6. Learned counsel for the applicant has restricted his argument with regard to the fact that the applicant has been facing incarceration for last more than two years and even the trial has been going on for last one and half year and the inordinate delay in disposal of the case the applicant-accused to be admitted to bail as held by the Hon'ble Apex Court in different judgments that the under trial is admitted to bail when there is likelihood of the trial being concluded in near future.

7. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the trial court order rejecting the bail application of the applicant-accused.
8. The applicant-accused filed bail application before the trial court on 19.11.2022 and the trial court framed charges for offences under Sections 8/21/22/27-A/29 NDPS Act against the applicant-accused and the bail application of the applicant-accused was dismissed vide order dated 17.02.2023.
9. What comes to the fore from the material on record is that in the charge sheet as well as in the seizure memo, it is recorded that 23 strips of Spasmo Proxyvan plus in the vehicle and two strips during his personal search each strip containing 24 capsules (total $552+48=600$ capsules) were recovered from the possession of the applicant. However, in the letter addressed by the Executive Magistrate, to the Director, FSL, Srinagar, at the time of sealing of the samples of the capsules, the name of the drug is shown as 'Spasmo Proxyvan-T Plus'. The report of the FSL dated 28.11.2020 also records the name of the drug as 'Spasmo Proxyvan-T Plus'. As per the report of the FSL, "Tapentadol" was detected in the sample that was examined by it.
10. Admittedly, in the case against the applicant, rigor of Section 37 of NDPS Act is applicable for the commission of offences including offence punishable under Section 27-A NDPS Act and also that the quantity of alleged drug recovered from the applicant falls within the commercial quantity.

11. Learned counsel for both the sides stated that the prosecution evidence has been almost concluded except examination of one more witness and by examining of that witness the prosecution evidence shall be completed, therefore, the prosecution evidence is at the fag end and it cannot be said that there shall be delay in disposal of the case due to prosecution hence forth, if there is any delay it will be caused due to the defence only. The principle laid down by the Hon'ble Apex Court that in case the trial cannot be expected to be completed soon, the applicant -under trial is entitled to bail, shall not be applicable in the facts and circumstances of the present case where the prosecution evidence is almost completed.
12. Viewed thus, no case is made out for grant of bail at this stage and the bail application is accordingly **dismissed**. However, before parting with this order, it goes with saying that the trial court shall make every endeavor, for expeditious disposal of the case.

SRINAGAR

30.12.2023

**(M.A.CHOWDHARY)
JUDGE**

Mujtaba

Whether approved for reporting Yes/No.