

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

Bail App No. 05/2025

Reserved on: 10.10.2025

Pronounced on: 18.10.2025

Uploaded on: 18.10.2025

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Liaqyat Ali @ Lucky.

.....Applicant

Through :- Mr. MA. Goni, Sr. Advocate with
Mr. S. Tanzeel Illahi, Advocate.

v/s

UT of J&K & Ors.

.....Respondents

Through :- Mr. Vishal Bharti, Dy. AG..

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Petitioner, through the medium of present petition, seeks his enlargement on bail, as an under-trial, in case FIR No. 109/2023, registered with Police Station, Ghagwal, District Samba for offences under Sections 8/21-c/22-c/25/27-A/29 NDPS Act, after a similar plea came to be rejected by learned Additional Sessions Judge, Samba [“the trial court”].

02. An overview of the prosecution case is that on 25.11.2023, officials of Police Post Rajpura and NDPS Team of District Samba laid a joint Nakka, near the Police Post, under the supervision of Dy. SP Headquarters. At about 1200 hours, they intercepted a Mahindra Bolero Car bearing Registration No. JK02AE/5538 on its way from Sherpur to Rajpura. The driver of the vehicle, in a bid to give a slip to the Nakka party, reversed the vehicle and hit and damaged the official BP vehicle of PP Rajpura, bearing Registration No. JK21F-8385.

This gave rise to the suspicion, due to which the Police Party swung into action and apprehended a person sitting on the front side of the vehicle, whereas driver of the vehicle succeeded in fleeing away. When enquired, the said person revealed his identity as Liqauat Ali @ Lucky, a resident of Gurdaspur, Punjab-the petitioner. He revealed that the name of the driver of the said vehicle was Baghu. He was served upon a notice, under Section 50 NDPS Act, for his person search, and he exercised his option to be searched in the presence of a Magistrate. The Magistrate was telephonically called on the spot, in whose presence about 550 to 650 grams Heroine (Chitta)-like substance came to be recovered from the right pocket of his white trouser. The suspected vehicle was also searched, during which a Vivo mobile phone came to be recovered. During interrogation, the petitioner disclosed that he and the driver of the vehicle, namely, Baghu, had brought the contraband from Gurdaspur, Punjab for sale to the youth of Samba and adjoining areas. Accordingly, a docket was sent to Police Station Ghagwal, on the receipt whereof, the aforesaid FIR came to be registered, and the Investigating Officer reached the spot, who took the contraband and the vehicle into his custody.

03. During investigation, the Investigating Officer, besides other legal formalities, seized the recovery memo and one transparent polythene packet containing heroin-like substance from SI Hardev Singh-Incharge Nakka Party. The aforesaid contraband, without polythene, weighed 589 grams, which was seized and sealed as per law. A sample of the contraband was extracted by the Investigating Officer and sent to FSL Jammu for chemical examination, and as per the chemical report, Diacetyl Morphoine (Heroin) was detected.

04. It also surfaced during investigation that aforesaid vehicle was registered in the name of one Imam Hussain @ Maltu, and the petitioner during

investigation revealed that said Imam Hussain @ Maltu and Baghu, driver of the vehicle, would frequently go to Punjab to buy “Chitta” in order to sell it to the youth of Samba and adjoining districts. He also disclosed that Imam Hussain had purchased this vehicle by selling Chitta to the youth of Samba. The CDR and tower location of both of the accused persons were obtained, and as per the tower location and CDR, all the accused persons were in regular contact with each other. The investigation culminated in the presentation of charge-sheet against the petitioner on 20.05.2024, for the aforesaid offences; while further investigation, against co-accused was kept open.

05. The petitioner preferred an application in the trial court for bail, which came to be rejected on 25.07.2024 primarily on the ground of gravity of the charge and bar under Section 37 of the NDPS Act.

06. It is contention of the petitioner that on the day of occurrence, i.e., 25.11.2023, he took lift in the vehicle in question, i.e., Mahindra Balero Car bearing Registration No. JK02AE/5538 and on way to meet his sister near Beli Charana, Jammu, the said car came to be intercepted by the police. The driver of the car, who had provided the lift ran away and when car was searched, contraband in question came to be recovered from the car. According to the petitioner, since police failed to catch hold of the actual offender-the driver of the car, they implicated and arrested him in a false case. The petitioner has denied having made any statement to the police, during investigation that driver of the vehicle was Baghu, who had brought the contraband from Gurdaspur, Punjab for sale to the youth of Samba and adjoining areas. According to the petitioner, he has been implicated in the case on the basis of recovery made from the car of somebody, who was unknown to him.

07. On the legal front, it is contention of the petitioner that rigor of Section 37 NDPS Act is not absolute, as it only provides that bail in such cases cannot be granted unless prosecution is afforded an opportunity to oppose the application and Court is satisfied that there are reasonable grounds to believe that accused is not guilty of such offence. It is contention of the petitioner that he has been arrested for a crime, which he never committed and has been made a scapegoat by the police. It is also the contention of the petitioner that prosecution has failed to examine any witness in a trail of more than one year. The applicant has also alleged breach of the mandatory requirement of Section 50 NDPS Act. He undertakes to comply with the terms and conditions, in the event of his release on bail.

08. The plea has been opposed on the other side by the respondent-UT predominately on the ground of gravity of the charge and application of bar contained under Section 37 of NDPS Act.

09. Heard learned counsels for the parties and perused the record.

10. Law of bails dovetails the conflicting interests of shielding the society from the hazards of those committing the crimes and their propensity to repeat the crime while on bail and absolute adherence to the fundamental principle of criminal jurisprudence regarding the presumption of innocence of an accused until he is found guilty. The grant or refusal of bail, as such, must reflect a perfect balance between these two conflicting interests.

11. Mr. M.A. Goni, learned senior counsel, appearing for the petitioner, has taken this Court through the testimonies of prosecution witnesses so far examined in the trial court, to highlight the contradictions, in particular with respect to the registration number of the vehicle, i.e. Manindra Balero Car,

which came to be intercepted by the Police, whereupon the contraband in question is alleged to have been recovered from the person of the petitioner.

12. It is trite that while critical examination of the prosecution evidence, recorded during the trial is not permissible while considering the question of bail, to ensure that there is no prejudging of the matter, a brief examination, however, to be satisfied about the existence or otherwise of a prima facie case can be undertaken.

13. As per the prosecution story, Mahindra Bolero Car bearing Registration No. JK02AE/5538 was intercepted at the relevant time. However, registration number of the said vehicle, in the docket which was flashed for the registration of the case, was mentioned as JK02E/5536. There are also discrepancies in the statements of prosecution witnesses with respect to registration number of the aforesaid car. However, PW Garu Ram, Addl. SP, Samba, who was Incharge of the Nakka Party at the relevant time, in his cross-examination has clarified that in fact registration number of the vehicle was JK02AE/5538 and it was inadvertently written as JK02E/5536. Pertinently, but for the registration number of the aforesaid vehicle, the prosecution witnesses are consistent with respect to the seizure of the contraband from the conscious possession of the applicant. Therefore, the entire prosecution case, in particular, at the time of consideration of a bail plea, cannot be thrown overboard.

14. Learned counsel for the applicant has also taken an exception to the non-association of independent witnesses to the recovery-cum-seizure memo by the investigating agency. No doubt, independent witnesses in the present case have been cited in the charge-sheet and have been examined during the trial. However, it is a settled position of law that testimonies of police officials carry the same weight as those of independent witnesses and they cannot be viewed

with suspicion merely because they are police officials. Prosecution can make out a case against an accused, provided testimonies of official witnesses or police witnesses are found worthy of credence.

15. Another plea raised by learned senior counsel for the petitioner is that the recovery-cum-seizure memo has been authored by PW Hardev Singh, who has been examined by the prosecution on 18.04.2025. However, the recovery-cum-seizure memo has not been put to its author, i.e. PW Hardev Singh, during his examination-in-chief in the trial court. A perusal of the recovery-cum-seizure memo reveals that PWs HC Naik Mohammad No. 576/Samba and HC Rahim Din 220/Samba are witnesses to the said memo, who have been cited as prosecution witnesses in the charge-sheet. True it is that prosecution has been negligent in putting the recovery-cum-seizure memo to its author, PW Hardev Singh during his examination, however, as witnesses to the said memo are yet to be examined, prosecution can still prove the document by examining the said witnesses.

16. Another plea urged by learned senior counsel by the petitioner is that Section 50 NDPS notice has been served upon the petitioner, in a case where there was no prior information. In my opinion, it is the failure on the part of the investigating agency to serve Section 50 NDPS notice upon the accused, in cases of prior information, which is fatal but an accused cannot be heard to say that he was in any way prejudiced by the issuance of Section 50 NDPS notice upon him in cases of chance recovery. Learned counsel for the petitioner has failed to explain as to how petitioner is prejudiced by the issuance of prior notice under Section 50 NDPS Act.

17. Delay in trial has been urged as an additional ground for emancipation of the petitioner.

18. It goes without saying that delay in trial, by itself, constitutes denial of justice and any such delay on the part of the trial Court or the prosecution, as the case may be, amounts to violative of Article 21 of the Constitution of India. The right to speedy trial and the presumption of innocence are, no doubt, crucial considerations in granting bail. However, it is equally trite that it is not an absolute or automatic ground for enlargement on bail and Court is obliged to consider the totality of circumstances which caused delay in conclusion of the trial.

19. I am fortified in my opinion by **Dipak Shubhashchandra Mehta v. C.B.I. & Anr.; AIR 2012 SC 949** whereby Hon^{ble} Supreme Court while recognising the right of accused to be released on bail, in cases of delay in trial, has clarified that this principle cannot be mechanically applied to all cases. Relevant excerpt of the judgment reads as below:-

"17. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. [Vide Babba vs. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar vs. State of U.P., (2000) 9 SCC 443.2]: (AIR 2000 SC 3406 But the same should not be applied to all cases mechanically."

20. A similar view has been taken in **State of Bihar & Anr vs. Amit Kumar alias Bacha Rai; AIR 2017 SC 2487**, whereby the Apex Court cancelled the bail granted by the High Court merely on the ground of prolonged custody of the accused. Pertinently, it was held by the Apex Court that when seriousness of the offence is such, prolonged incarceration of the accused should not be the concern of the Courts.

Relevant observation contained in para 9 of the judgment runs as below:-

"9. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts".

21. An identical view has been expressed in **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another; AIR 2004 Supreme Court 1866** whereby Hon^{ble} Supreme Court refused to release the accused on bail, who was involved in serious offence and had already undergone a period of incarceration of three years:-

“14. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

22. If the trial Court record is carefully glanced over, what comes to the fore is that it is not the trial Court or the prosecution alone who can be held responsible to cause delay but applicant and co-accused are equally responsible.

23. A perusal of the record reveals that final report against the petitioner came to be presented in the trial court on 20.05.2024. Learned trial court directed Secretary, DLSA to inquire as to whether the petitioner/accused had engaged a counsel or was in need of free legal aid. Meanwhile, the prosecution filed charge-sheet against co-accused Imam Hussain on 07.09.2024 and Secretary, DLSA Samba was again directed to confirm from the accused whether they had engaged a counsel for their defence, and if not, both were directed to be provided free legal aid. Subsequently, both the charge-sheets came to be transferred by the Principal Sessions Judge, Samba to Additional Sessions Judge, Samba, and a perusal of the record reveals that learned defence counsels submitted their written arguments on charge/discharge on 07.11.2024 only, and on the very following date, i.e., 20.11.2024, both the applicant and co-accused came to be charged by the trial court for the aforesaid offences, and same was sent to the concerned jail for signatures of accused persons, which

were received by the trial court on 11.12.2024. Therefore, it is evident that the trial, in effect, commenced w.e.f. 11.12.2024, and prosecution, so far, has examined 06 witnesses out of 21 cited in the charge-sheet.

24. It is evident from the chronology of events adumbrated in the preceding para that neither the trial court nor prosecution alone can be held responsible for the procrastinated trial. Both the petitioner and co-accused have equally contributed to cause delay, as it took about six months for the accused persons to engage the lawyers and the defence to argue on charge/discharge and submit written arguments on 07.11.2024, which was decided on the next date, i.e., on 20.11.2024. Consequent whereupon, both the accused persons were charge-sheeted by the trial court on 28.11.2024, and charges were received by the trial court, after their signatures from the concerned jail on 11.12.2024.

25. Be it noted that a huge consignment of 589 kgs of Poppy Straw came to be recovered from the person and conscious possession of the petitioner. In the circumstances, as held by the Apex Court, in **Amit Kumar** and **Kalyan Chandra Sarkar**, mere fact that petitioner has undergone a certain period of incarceration, by itself would not entitle him to be enlarged on bail.

26. No doubt, the length of custody and likelihood of the trial delay can be key factors in granting bail to an accused regardless of the seriousness of the charge, but it is not an absolute right and Court has to take various factors into consideration including the role played by the accused and assistance rendered by him to ensure speedy trial. Where an accused equally contributes in the procrastinated trial and shares the responsibility for delay, alongside the prosecution and the court system, by requesting unnecessary adjournments, the plea of bail on the ground of protracted incarceration, is not available to him.

27. For what has been observed and discussed above, the present application is found devoid of merit, hence dismissed.

28. Before parting, however, it is made clear that nothing said in this order shall be construed as an expression of opinion on the merits of the case.

29. Disposed of.

(Rajesh Sekhri)
Judge

JAMMU
18.10.2025
Abinash

*Whether the judgment is speaking? **Yes***
*Whether the judgment is reportable? **Yes***

