

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

Reserved on: 07.10.2025

Pronounced on: 18.10.2025

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Whether the operative part or
full judgment is pronounced

Case No.:- Bail App No. 37/2025
CrIM No. 238/2025
c/w
CrI R No. 33/2025
CrIM No. 553/2025

Imam Hussain @ Maltu

.....Petitioner(s)

Through: Ms. Vasudha Sharma, Advocate

Vs

UT of J&K and anr.

..... Respondent(s)

Through: Mr. Vivek Mattoo, Assisting counsel vice
Mr. Vishal Bharti, Dy. A.G

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner-Imam Hussain @ Maltu, through the medium of present bail application has invoked jurisdiction of this Court under Section 483 of BNSS for grant of bail in case arising out of FIR No. 109/2023 for offences under Sections 8/21(c)/22(c)/25/27(a)/29 of NDPS Act, 1985. He has also challenged order dated 20.11.2024 passed by learned Additional Sessions Judge, Samba (hereinafter referred to as

“the trial Court”) whereby charges for offences under Sections 8, 21(c), 25, 27-A and 29 of NDPS Act have been framed against him.

2. As per case of the prosecution, on 25.11.2023, the police of police station, Ghagwal had laid a Naka at Rajpura, near Police Post, Rajpura. At about 1200 hours, one Mahindra Boler vehicle bearing registration No. JK02AE/5538 was proceeding from Sherpur towards Rajpura side. The said vehicle was signalled to stop for checking purpose but the driver of the vehicle tried to drive away the vehicle and in this process, the vehicle collided with the official vehicle of police post, Rajpura bearing registration No. JK21F/8385. The police party apprehended one person who was sitting in the vehicle bearing registration No. JK02AE/5538 on its front seat, whereas, driver of the vehicle fled away from the spot. The apprehended person was identified as Liqauat Ali @ Lucky who identified the driver of the offending vehicle as Baghu, a resident of Sarore of Bari Brahmana.

3. Accused Liqauat Ali @ Lucky was subjected to personal search after complying with the mandate of Section 50 of the NDPS Act and from his personal search, approximately 550 to 650

gms of Heroin like substance was recovered from right side pocket of his trouser. The vehicle in question was also subjected to search from which one Vivo Mobile Phone without Sim Card was recovered. The apprehended accused disclosed before the police that he had brought the contraband from Gurdaspur, Punjab for the purpose of selling it to youth at Samba. A docket in this regard was prepared on the basis of which the aforesaid FIR came to be registered whereafter, accused Liqauat Ali @ Lucky was arrested.

4. During investigation of the case, the recovered contraband was seized and it was weighed. Its weight was found to be 589 grams without polythene. The samples were drawn from seized contraband, the same were sealed and sent to FSL for chemical analysis. The vehicle bearing registration No. JK02AE-5538 was also seized. The mobile phone recovered from the vehicle was seized and sent to FSL Srinagar for analysis. It was found that the vehicle in question was registered in the name of petitioner herein. It was stated by the apprehended accused that the petitioner and co-accused Baghu used to visit Punjab frequently for the purpose of buying Chitta in order to sell the same to youth of Samba and

other adjoining districts. It was also disclosed by the said accused that the petitioner has purchased the vehicle in question from the sale proceeds of Heroin. The investigating officer also collected the Call Data Record and tower location of the accused persons and from its analysis, it was found that all the accused persons used to frequently visit Punjab from Samba and were in contact with each other. After obtaining the FSL report, it was found that the recovered substance is Diacetylmorphine (Heroin).

5. After completion of investigation of the case, offences under Sections 8/21(c)/22(c)/25/27(a)/29 of NDPS Act, 1985 were found established against accused Liqauat Ali @ Lucky, Baghu and Imam Hussain @ Maltu, the petitioner herein. Initially, the Challan was laid only against the co-accused Liqauat Ali @ Lucky as other two accused were absconding but later on, after the arrest of the petitioner, a supplementary Challan was produced before the learned Additional Sessions Judge, Samba.
6. It seems that the petitioner had approached learned Additional Sessions Judge, Samba (trial Court) for grant of bail but his application was rejected by the said Court in terms of orders

dated 21.10.2024 and 03.01.2025. On 20.11.2024, the learned trial Court passed another order whereby charges for offences under Section 8, 21 (c), 25, 27-A of NDPS Act were framed against the petitioner.

7. The petitioner has sought bail and has challenged the order whereby charges have been framed against him on the grounds that the material collected by the investigating agency during the investigation of the case does not disclose commission of any offence by the petitioner. It has been submitted that case of the prosecution as against the petitioner hinges on the disclosure statement made by co-accused Liqauat Ali @ Lucky which has not even been made part of the charge-sheet nor the same has been recorded in writing by the investigating agency. It has been further contended that even the Call Data Records do not connect the petitioner to alleged crime as there is no document on record to establish that the Cell numbers attributed to the petitioner were actually being used by him. It has been submitted that merely on the basis of CDRs, the petitioner cannot be implicated in the alleged offences.

8. The respondent-prosecuting agency has, in its reply to the application has, after narrating the allegations contained in the charge-sheet against the petitioner and co-accused contended that the petitioner is involved in a heinous offence inasmuch as, commercial quantity of contraband substance has been recovered from the co-accused with whom the petitioner had hatched a conspiracy, therefore, he does not deserve the concession of bail.

9. I have heard learned counsel for the parties and perused the record of the case including the record of trial Court.

10. So far as principles for grant of bail in a non-bailable offence are concerned, the same are more or less well settled on the basis of judicial precedents of the Supreme Court and of this Court. The factors required to be considered for deciding an application for grant of bail are stated as under:

a) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence.

b) Nature and gravity of the accusation.

c) Severity of the punishment in the event of conviction.

d) Danger of the accused absconding or fleeing if released on bail.

e) Character, behaviour, means, position and standing of the accused.

f) Likelihood of the offence being repeated.

g) Reasonable apprehension of the witnesses being influenced.

h) Danger of justice to be thwarted by grant of bail.

11. So far as offences under NDPS Act are concerned, in cases involving recovery of commercial quantity of the contraband as also in the cases in which the accused is alleged to be involved in an offence under Section 27-A of the said Act are concerned, besides the aforesaid factors, at the time of considering a prayer for bail of the accused, the Court is also required to factor in the provisions contained in Section 37 of the NDPS Act. As per the provisions contained in the said section, before releasing an accused on bail, public prosecutor has to be given an opportunity to oppose the application and the Court has to be 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. Section 37 of NDPS Act is not complete bar to the grant of bail in a case where recovery of contraband drug falls under the parameters of commercial quantity or where accused is alleged to be involved in offence of financing illicit trafficking and harbouring offenders. It only provides that bail in such cases cannot be granted unless the prosecutor has been given an opportunity to oppose the application and the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that there is no likelihood of his committing any offence while on bail.

11. In the backdrop of the aforesaid legal position, let us now advert to the facts of the present case. The allegation against the petitioner is that he is involved in conspiracy to possess commercial quantity of contraband substance which has been recovered from the possession of co-accused Liqauat Ali @ Lucky. It is alleged that the petitioner has allowed his vehicle to be used for transportation of commercial quantity of contraband and that he has been involved in financing of illicit traffic and harbouring of offenders. Thus, the petitioner has been booked for offences under Sections

8/21(c)/22(c)/25/27(a)/29 of NDPS Act, 1985. Vide order dated 20.11.2024 passed by the learned trial Court, charges for the aforesaid offences stand framed against the petitioner which has been impugned by the petitioner by virtue of revision petition bearing CrI R No. 33/2025. The contention of the petitioner is that there is no material on record of the charge-sheet which can connect him with the alleged crime.

12. In the above context, if we have a look at the material collected by the investigating agency during investigation of the case, it is revealed that we have material to show that 589 grams of heroine have been recovered from the possession of co-accused Liaquat Ali @ Lucky. Merely on the basis of statement of said accused that the petitioner is also involved in the conspiracy to possess and sell contraband substance, he cannot be charged for the offences of possessing or selling contraband substance, as the said statement is inadmissible in evidence because the same is alleged to have been made before the police and it has not led to discovery of any fact. Apart from this, the said statement of the co-accused Liaquat Ali @ Lucky has not even been recorded by the investigating agency.

13. However, besides this statement, we have on record of the charge-sheet the material to show that vehicle No. JK02AE/5538 has been seized in which co-accused Liqauat Ali @ Lucky was travelling along with the contraband. The said vehicle as per the material collected by the investigating agency is registered in the name of petitioner. Therefore, there is material on record to prima-facie show that the petitioner has allowed his vehicle to be used for transportation of contraband which was recovered from the possession of occupant of the said vehicle. Not only this, the Call Data Records show that the petitioner was in constant touch with co-accused Liqauat Ali @ Lucky and driver of the said vehicle, co-accused Baghu. There is also material on record that all the three of them have visited Punjab at one and the same time which is clear from the tower locations regarding which material has been collected by the Investigating Agency. Thus, there are strong circumstances which tend to show that the petitioner has been in touch with other co-accused and that he has allowed his vehicle knowingly to be used for commission of the offence. From this material, prima-facie, it appears that the petitioner is involved in commission of offences for which

he has been charged. Thus, it can be safely stated that there are grounds for presuming that the petitioner is involved in the commission of the offences for which he has been charged. His plea for discharge is, therefore, meritless.

14. So far as the question of grant of bail to petitioner is concerned, as already stated, the petitioner is alleged to be involved in conspiracy relating to possession of commercial quantity of contraband by knowingly allowing his vehicle to be used for commission of the said offence. Therefore, provisions contained in Section 37 of the NDPS Act are attracted to the facts of the present case. Since the petitioner has failed to satisfy this Court that there are reasonable grounds to believe that he is not guilty of offence for which he is charged, therefore, he is not entitled to grant of bail.

15. The trial of the case has begun only about a few months back and it is still at its inception. Further, it is to be noted that the petitioner had absconded after the registration of the FIR. In view of his said conduct and keeping in view the fact that most of the prosecution witnesses are yet to be examined, enlarging the petitioner on bail at this stage is likely to thwart the course of justice.

16. For the foregoing reasons, both the petitions are found to be without any merit. The same are, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

JAMMU
18.10.2025
Tarun/PS

Whether order is speaking: Yes

Whether order is reportable: Yes

