

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

Bail App No. 65/2024

Date of Pronouncement: 28.10.2025

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Mubarak Hussain, Age 45 years,
S/o Mohd. Iqbal
R/o Village Pul Doda, P.O Khallni,
District Doda.

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

Through: Mr. Mohd. Latif Malik, Advocate

Vs

Union of India through Narcotics Control
Bureau, New Delhi

..... Respondent(s)

Through: Mr. Vishal Sharma, Sr. Advocate (DSGI) with
Mr. Eishaan Dadhichi, CGSC

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER(ORAL)

1. In the instant bail application filed by the petitioner herein bail is being sought in the case arising out of FIR No. 08/2020 registered with Narcotics Control Bureau under Section 8, 20 and 60 of Narcotics Drugs and Psychotropic Substances Act of 1985 (*for short the "Act of 1985"*) and pending trial before the Court of 2nd Additional Sessions Judge, Jammu (*for short the "Trial Court"*).
2. The instant bail application is a second attempt being made by the petitioner herein for seeking bail on the first attempt, the petitioner herein had moved a bail application before the trial Court on 17.06.2023, which application came to be rejected on 20.03.2024.

3. Before proceeding the advert to the application in hand, it is deemed appropriate refer in brief to the prosecution case set up in the charge-sheet hereunder;
4. According to the prosecution on 29.08.2020 at about 1700 hrs a secret information came to be received from reliable source that one person namely Mubarak Hussain (petitioner herein) is carrying huge quantity of narcotics drugs (Charas) while coming from Srinagar in a truck bearing registration No. JK02BM-0191 to Jammu and that the said information came to be reduced into writing and placed before the Superintendent NCB, Jammu who constituted a team to carry out an operation appointing one Vijay Kumar, Intelligence Officer as seizing officer, besides appointing various officers in a team, constituted for the purpose which team started checking all the trucks coming from Srinagar and upon seeing the truck in question, got the same stopped and consequently searched the same and during the said search, two packets wrapped with brown colour cello tape were found in the cabin of the truck which packets were opened wherein 47 nos. Chalian (Charas) packets weighing 1.550 kgs covered with kind of corn and wrapped with thread, whereafter, recovery-cum-seizure memo was prepared and signatures of the accused/petitioner were obtained and a panchnama was also prepared on spot and same was read over and explained to the accused/petitioner and that the requirements of Section 57 of the Act of 1985 were duly complied with and upon further investigation in the matter, the statement of the accused/petitioner was recorded under section 67 of the Act, 1985, wherein the accused/petitioner disclosed that the drugs in question

were handed over to him by the person namely Abdul Gani of Qazigund and that the drugs were to be delivered in Jammu and upon completion of the investigation offences under Section 8, 20 and 60 were found to have been committed by the petitioner and consequently the accused-petitioner was formally arrested on 30.08.2020 and was on 31.08.2020 produced before the Court of Principal Sessions Judge, Jammu and that a sample of drug which was sent for the Chemical tests to the Central Revenues Control Laboratory, New Delhi was found to be Charas and that also surfaced that the accused-petitioner have had a criminal history and has been involved in case FIR No. 07/2015, 01/2016, 04/2004 and 08/2009 registered in various Police Stations/ Doda.

5. The accused-petitioner herein while maintaining the instant application has contended that he has been got involved in a false and frivolous case by the prosecution and that he is behind the bars since 30.08.2020 and that out of six listed witnesses, the prosecution ever since filing of the charge-sheet got only three witnesses examined who too have not supported the case of the prosecution and that during the period of three and half years from the date of filing of the charge-sheet, the petitioner has been languishing in Jail and thus owing to the delay in the trial by the Court, petitioner is entitled to be granted bail and that the petitioner as well is entitled to the concession of bail owing to the dependency of his old aged mother and also that he belongs to the weakest economic strata and also is the only earning member of the family and that undertakes not to leave the territory of UT/country in the

event is granted bail as also there is no likelihood of the petitioner absconding or attempting to tamper with the prosecution evidence.

6. Objections to the application have been filed by the respondent wherein the application is being opposed on the premise that the accused-petitioner is involved in the commission of a heinous offence and has criminal antecedents having been found involved in multiple criminal cases in District Doda and that the accused-petitioner was found involved in the commission of the offences covered by the charge-sheet and that the trial Court has already framed charges against the accused-petitioner and the prosecution has examined three witnesses out of six listed witnesses who has supported the prosecution case and since the petitioner is involved in the commission of the case relating to drugs of a commercial quantity, there is every likelihood that the accused-petitioner would repeat the commission of similar offence being a habitual offender involved in as many as five criminal cases and that there is also every apprehension that in case the accused/petitioner is granted bail, he may jump over the same and scuttle the trial of the case.

Heard learned counsel for the parties and perused the material on record.

7. Before proceeding to advert to the application in hand, it would be significant and appropriate to refer hereunder to the provisions of Section 37 of the Act of 1985;

1[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 2[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) 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.
- (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 1947) or any other law for the time being in force, on granting of bail.]

A bare perusal of the section (supra) postulates that the cases in which commercial quantity of contraband is alleged to have been recovered from an accused, bail can only be granted if there are reasonable grounds to believe that the accused is not guilty of such offences and that he is not likely to be commit any offence while on bail. It is settled position of law that the said mandate of the Section (supra) has to be followed and adhered to at the time of consideration of a bail application of an accused and the rider of said section (supra) is to be applied to a bail application in addition to the relevant conditions provided under the Code of Criminal Procedure.

8. It is not in dispute that the contraband in question alleged to have been received has been of a commercial quantity, therefore, under these circumstances, the Provisions of Section 37 (supra) are applicable to the case in hand and the expression “**reasonable ground to believe**” appearing in Section (supra) has to be complied with in line and tune with the interpretation thereof expressed by the Apex Court in series of judgments including in case titled as “*Union of India through Narcotics Control*

Bureau, Lucknow versus Md. Nawaz Khan", reported in **2021SCC Online SC 782**, wherein, at para 22, following has been laid down.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal (2003) 7 SCC 465 Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

9. Having regard to the aforesaid position of law and coming back to the case in hand, the first plea raised by the petitioner for seeking bail in the instant application is that he has been got involved in a false and frivolous case and that he did not commit any offence. The said general plea of the petitioner of innocence, however, cannot be accepted at this stage, more so, in view of the fact that the charge qua the offences covered in the charge stands already framed by the trial Court and out of six listed witnesses only three stand examined by the trial Court, as such, no finding can be returned by this Court on the guilt or innocence of the petitioner at this stage merely upon a general contention of innocence by the petitioner. Furthermore law is settled that in the matter of grant of refusal of bail, the Court is not required while considering a bail application to scrutinize and appreciate the evidence in detail and to have a meticulous and critical analysis of the matter.
10. The next plea of the petitioner urged for seeking concession of bail in the instant application is the ground of delay in conducting trial of the case by the trial Court. However, perusal of the record available on the file inasmuch

as the order dated 20.03.2024 passed by the trial Court in terms whereof the earlier bail application of the petitioner came to be rejected tends to show that the plea of delay has been already addressed and has been toned is a figment of imagination by the trial Court.

11. Viewed thus, for the aforesaid reasons the instant bail application is found to be without any merit and, is, accordingly *dismissed*. However, the dismissal of the instant bail application shall not stand in the way of the petitioner in seeking bail on fresh grounds from the trial Court under changed circumstances.

12. Furthermore, it is made clear that this court did not express any opinion as to the guilt or innocence of the petitioner while disposing of the instant bail application hereinabove and any observations made shall be deemed it have been made for the purpose of the disposal of the instant bail application alone.

(Javed Iqbal Wani)
Judge

Jammu

28.10.2025

Rahul Sharma

Whether the order is reportable: Yes

Whether the order is speaking: Yes