

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

Bail App No. 126/2025
CrIM No. 1705/2025

Reserved on: 08.12.2025
Pronounced on: 12.12.2025
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*Whether the operative part or full judgment is
pronounced-**Full Judgment***

Abdul Rashid

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

Through: Ms. Vasudha Sharma, Advocate.
Vs

U.T of J&K

..... Respondent(s)

Through: Mr. Vishal Bharti, Dy. AG

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

Bail App No. 126/2025

- 01.** Applicant, through the medium of this petition, seeks grant of bail in a case pending on the files of Sessions Court Samba, arising out of a case registered at Police Station Vijaypur vide FIR No. 165/2021, for commission of offences punishable under Sections 8, 15 and 29 of NDPS Act.
- 02.** Brief facts of the case are that on 02.10.2021, police of police station Vijaypur, during patrolling/checking of the vehicles at Rakh Barotian, noticed one truck bearing no.JK13B-9002 proceeding from Jammu towards Punjab and was signalled to stop, the driver stopped the vehicle, came out of the vehicle and tried to run away but was apprehended by the

police. During enquiry, the driver disclosed his name as Abdul Rashid. On checking of the said vehicle, 8 apple boxes containing bhukki (poppy straw) were recovered from first two layers of the cargo cabin of the truck, the recovered contraband, on being weighed, came to be 102 Kgs. Accordingly, FIR No. 165/2021 for the commission of offences u/s 8/15 NDPS Act was registered at police station Vijaypur.

- 03.** During investigation, IO visited the spot, prepared site plan and after thoroughly checking of the truck, 600 boxes of apple and pear were found and 8 other boxes containing poppy straw were found, statements of witnesses u/s 161 CrPC were recorded, during further questioning, the driver of the said vehicle disclosed that on 26th of Sept., he loaded 600 apple boxes from Charar-e-Sharief mandi and had to deliver it in New Delhi; that after leaving the mandi, he met with Bashir Ahmed Dar and Mohd. Yousaf, where they loaded 8 boxes of poppy straw and they told him that 8 boxes are special ones and have to be delivered somewhere in Punjab, during further inquiry, involvement of Bashir Ahmed Dar and Mohd. Yousuf was established, accordingly, offence u/s 29 NDPS Act was also added.
- 04.** It is the case of the applicant that after being aggrieved of the arrest of the applicant in connection with FIR No.165/2025 U/Ss 8/15/29 NDPS Act, he preferred a bail application before the Sessions Court, Samba on 15.07.2024 and vide order dated 15.04.2025, the Trial Court rejected the

bail application of the applicant. Aggrieved of the decline of grant of bail by the Trial Court, the applicant has filed the instant bail application.

05. Applicant seeks grant of bail on the grounds that he has been implicated in a false case where recovery is doubtful in nature and the safe custody of the alleged contraband is also not established by the investigating agency as no Malkhana Register of PS, Vijaypur was ever produced before the trial court and the Malkhana Extract exhibited as EXTP-7 allegedly issued by the Malkhana Incharge in favour of the IO showed inconsistencies, thus, vitiated the safe custody of the contraband; that there was non-compliance of mandatory and directory provisions i.e. Sections 52, 52-A, 55 and 57 of the NDPS Act; that there are glaring inconsistencies in the testimony of prosecution witnesses inasmuch as out of 12 listed prosecution witnesses, PW-8 has turned hostile; that PW-7, Malkhana I/C has denied to have secured seized material; that PW-4 did not support the prosecution version; that the application has been in continuous incarceration since his arrest.

06. Objections have been filed on behalf of the respondents, wherein respondents opposed the grant of bail asserting therein that the applicant is involved in the commission of heinous offences under NDPS Act; 101 Kgs of Poppy straw was recovered in the case, prosecution has examined as many as 9 witnesses out of total 12 witnesses and all of them have supported the prosecution case; that the quantity of recovered contraband from the applicant falls under commercial quantity of contraband, as such

rigour of Section 37 of NDPS Act is applicable in the case; that enlargement of the applicant on bail at this stage would lead to tampering with the prosecution evidence and in case the applicant is admitted to bail, there is every apprehension that applicant may misuse the concession of bail; that the involvement of the applicant in a case of NDPS, has serious ramifications for society, which is being used in the present times to sustain the ecosystem of the narco-terrorism in the region, besides, spoiling the young generations by making them addicts, as also the recidivists.

07. Learned counsel for the applicant argued that there are grave and major inconsistencies and infirmities among the statement of the prosecution witnesses which creates a dent in the prosecution case and renders their version improbable and unbelievable; that no CFSL form was prepared on the spot which shows there is tampering with the alleged contraband; that no independent witnesses were associated on spot in spite of presence of independent witnesses. Lastly, it is prayed that the bail application of the applicant be allowed by admitting the applicant to bail.
08. In support of her arguments, learned counsel for the applicant has placed reliance on the decision of the Supreme Court in the case of ‘**Gurbax Singh Vs. State of Haryana**’, reported in **2001 (3) SCC 28**, wherein it is held as follows:

“The learned counsel for the appellant next contended that from the evidence it is apparent that the I. O. has not followed the procedure prescribed under [Sections 52, 55 and 57](#) of the N.D.P.S. Act. May be that the I.O. had no knowledge about the

operation of the [N.D.P.S. Act](#) on the date of the incident as he recorded the FIR under [Section 9/1/78](#) of the Opium Act. In our view, there is much substance in this submission. It is true that provisions of [Sections 52](#) and [57](#) are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article. In the present case, I.O. has admitted that the seal which was affixed on the muddamal article was handed over to the witness P.W.1 and was kept with him for 10 days. He has also admitted that the muddamal parcels were not sealed by the officer in charge of the police station as required under [Section 55](#) of the N.D.P.S. Act. The prosecution has not led any evidence whether the Chemical Analyser received the sample with proper intact seals. It creates a doubt whether the same sample was sent to the Chemical Analyser. Further, it is apparent that the I.O. has not followed the procedure prescribed under [Section 57](#) of the N.D.P.S. Act of making full report of all particulars of arrest and seizure to his immediate superior officer. The conduct of panch witness is unusual as he offered himself to be a witness for search and seizure despite being not asked by the I.O., particularly when he did not know that the substance was poppy husk., but came to know about it only after being informed by the police. Further, it is the say of the Panch witness that Muddamal seal used by the PSI was a wooden seal. As against this, it is the say of PW2 SI/IO that it was a brass seal. On the basis of the aforesaid evidence and faulty investigation by the prosecution, in our view, it would not be safe to convict the appellant for a serious offence of possessing poppy-husk.”

- 09.** On the point of link evidence, it is submitted that the same is not satisfactory as Malkhana Register was not produced to prove that seized contraband was kept in Malkhana on the date of seizure till it was taken for FSL for chemical analysis. Learned counsel for the applicant in support of his contention, placed reliance on the judgment of the Apex Court in the case of ‘**State of Rajasthan Vs. Gurmail Singh**’, reported in **2005 (0) Supreme (SC) 333** as also judgment rendered by this

court in the case of **‘Mohd Maqbool Raina Vs. Intelligence Officer, NCB, Jammu Zonal Unit, Jammu’**, reported in **2019 (1) JKJ 216 [HC]**.

10. Learned Deputy AG argued that the applicant had been found involved in a heinous crime as contraband i.e. 101 Kgs of poppy straw, which is of commercial quantity has been recovered from the accused, and the rigour of Section 37 of NDPS Act is applicable in the case; that the offence committed by the applicant causes adverse impact on the psyche of parents of younger generation as it can entrap the gullible youth which is hard to wean off; that illicit sale of psychotropic substances/drugs ruin the future prospects of youth and shatter aspirations of parents for their children to become good citizens and serve the nation in future; that the speed of the trial is phenomenal as out of 12 listed witnesses, 9 prosecution witnesses have already been examined who have supported the prosecution version; that the trial court has rightly denied the bail to the application by taking into considerations the principles governing grant of bail in heinous offences like this. Lastly, it is prayed that the bail application be dismissed.

11. Heard and considered.

12. It is an admitted case that gross commercial quantity of the poppy straw, wherein 101 Kgs was recovered from the possession of the applicant which he had tried to smuggle to Delhi on having been loaded from Charar-e-Sharief in Kashmir in his vehicle with fruit load. The argument of the learned counsel for the applicant is mainly on the point of

contravention of the provisions of Sections 52, 52-A, 55 and 57 of the NDPS Act. These are mostly the provisions dealing with the procedure to be adopted during investigation of the case. These provisions may be relevant for the final disposal of the case, however, in the considered opinion of this Court, bail, as prayed for, cannot be granted on the basis of contravention of these provisions. It is not open to this Court to discuss the evidence in detail lest the same affects the trial of the applicant before the Trial Court.

13. The prosecution has examined more than 9 witnesses out of 12 cited as prosecution witnesses. As such, the trial is expected to conclude at an early time in future. Mere detention of the applicant since his arrest for a longer time is of no relevance in view of statutory rigor/embargo contained under Section 37 of the NDPS Act. Hon'ble Supreme Court in a recent judgment passed in **Union of India Vs. Vigin K. Varghese; 2025 SCC OnLine SC 2440**, while setting aside the order of the High Court granting bail without properly considering the rigors of Section 37 held as follows:

“17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under [Section 37\(1\)\(b\)\(ii\)](#) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and

antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

18 to 21. xxxxxxx

22. The matters are remitted to the High Court of Judicature at Bombay for fresh consideration of the respondent's prayer for bail. The High Court shall, after affording an opportunity of hearing to both the sides and upon adverting to the statutory requirements of [Section 37](#) and to the relevant material on record, pass a reasoned order keeping in mind the observations made hereinabove within four weeks from the date of receipt of this order.....”

- 14.** The judgments relied upon by the learned counsel for the applicant are of no help to the applicant in view of the latest judgment of the supreme court in the case of **Vigin K. Varghese** (supra) on the subject.
- 15.** Having regard to the aforesaid discussions and facts and circumstances of the case on hand, it is found that applicant has failed to make out a case for grant of bail at this stage of the trial. Viewed thus, the application is rejected.

(M A CHOWDHARY)
JUDGE

Jammu
12.12.2025
Raj Kumar

Whether the order is reportable?: **Yes**