

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

Bail App No. 141/2025

Reserved on: 05.12.2025

Pronounced on: 10.12.2025

Uploaded on: 10.12.2025

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

Ashraf Mohd.

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

Through: Mr. Mehtab Gulzar, Advocate
Mr. Akeel Wani, Advocate.
(through VC)

Vs

U.T of J&K & Anr.

..... Respondent(s)

Through: Mr. Sumeet Bhatia, GA

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

Bail App No. 141/2025

01. Petitioner, through the medium of this petition under Section 483 of BNSS, 2023, seeks grant of bail in a case registered at Police Station Katra vide FIR No. 10/2022, for commission of offences punishable under Sections 8, 20, 21, 22, 25, 27-A of NDPS Act.

02. Brief facts of the case as revealed in the Chargesheet are that on 16.01.2022, a team of Katra Police, while performing Naka duty at PCP Nomain checked the vehicle bearing registration No.JK14C-3967 proceeding from Jammu towards Katra; that the driver of the said vehicle disclosed his name Mohd Ashraf and the passenger sitting in the said vehicle disclosed his name

Amjad Khan; that during checking of vehicle Heroin wrapped in a small polythene came to be recovered from inside the rear bumper of the vehicle which was wrapped in three packets weighing 950 grams, 840 grams and 900 grams; that the co-passenger Amjat Khan was carrying a bag and during search of bag, two packets of Charas were recovered from the bag weighing 850 grams and 900 grams from him on the spot; that the investigating officer drew the samples and sent to FSL for chemical analysis; that the FSL report confirmed Heroin and Charas from the samples drawn from the above mentioned contraband; that during the course of investigation the applicant made disclosure that he was courier/drug peddler of one Bashir Ahmed.

03. It is the case of the applicant that he is under custody for over three and a half years without conclusion of trial, which amounts to violation of his fundamental right to a speedy trial, guaranteed under Article 21 of the Constitution of India; that the Supreme Court in unequivocal terms held in a host of decisions that prolonged pre-trial detention without adjudication constitutes a grave miscarriage of justice;

04. It is the also case of the applicant that an amount of Rs. 5,77,000/- was alleged to be transferred by one Bashir Ahmed to the bank account of applicant bearing No.0374040100004842, as the applicant was projected as conduit of Bashir Ahmed by arranging and selling contraband (Charas) to him, who in turn, used to sell and distribute the contraband among locals of the area. Thus, allegation of applicant being indulged in illegal sale and purchase of contraband

was substantiated through frequent calls between the applicant and said Bashir Ahmed, as also bank account statement of the applicant.

05. It is stated that the applicant is in custody since his arrest; that no recovery of contraband was made from the applicant and no direct evidence has been adduced by the prosecution against him, not even a single prosecution witness has made any incriminating statement against the applicant; that the alleged bank transaction between the applicant and co-accused are matter of evidence that are to be proved during the course of trial; that the bail application moved before Sessions Court, Reasi was dismissed on 04.12.2024, however, the co-accused Bashir Ahmed, who is facing trial with the applicant in FIR No. 10/2022 under Sections 8/20/21/25/27-A NDPS Act was granted bail by the same trial court on 04.12.2024, despite allegations of financing drug trade and cash deposits to the applicant's bank account; that rejection of bail to the applicant and grant of bail to the co-accused in FIR No. 10/2022, reflects conflicting view by the trial court on similar set of circumstances. Lastly, it is prayed that the bail application be allowed and applicant be granted bail on the conditions which may be imposed by this court.

06. Objections stand filed on behalf of the respondent. A perusal whereof would show that commercial quantity of Heroin and three packets of Charas like substance recovered from inside the rear bumper of vehicle (JK14C 3967) belonging to Ashraf Mohd and two packets belongs to co-passenger Amjad Khan, when the said vehicle was stopped for checking at PCP Nomain; that based on which, case FIR No.10/2022 got registered at Police Station Katra

under Sections 8/20/21/22/25 of NDPS Act; that during the course of further investigation, it was found that one Bashir Ahmed made frequent calls to the applicant whose bank statement also shows multiple transactions amounting to Rs.5.7 lakh into the account of applicant; that the applicant was found involved in criminal conspiracy and was the courier of the accused Bashir Ahmed and instrumental in selling banned narcotics to adjoining areas of Katra of District Reasi; that the petitioner is a habitual drug addict and smuggler as he was booked in an NDPS Act case on earlier occasion; that the applicant was in judicial custody in connection with case FIR No. 10/2022 U/S 8/20/21/25 NDPS Act of P/S Katra; that records from the agencies concerned reveal that Bashir Ahmed, co-accused deposited nearly Rs.20,00,000/- in the applicant's bank account, who was his courier and used to get consignment of banned narcotics from Kashmir for him; that perusal of bank statement, certified copy of CDR, cash deposit slips and other circumstantial evidence, offence U/S 29 of NDPS Act was established against the applicant for becoming a party in criminal conspiracy as he was the drug peddler of co-accused Bashir Ahmed. It is lastly prayed that the bail application of the applicant be rejected as the applicant was involved in a case of NDPS, which has serious ramifications, 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.

07. Heard and considered.

08. Learned counsel for the applicant argued that the Trial Court vide order dated 04.12.2024 rejected the bail application of the applicant merely on the

ground that contraband allegedly recovered from the applicant is of commercial nature and had invoked the embargo of Section 37 of the NDPS Act, which is in teeth of the decision of the Supreme Court in the case of '**Union of India v. K. A. Najeeb**', (2021) 3 SCC 713; that in view of the judgment (supra), provisions of Section 37 NDPS Act cannot override the constitutional guarantee under Article 21 of the Constitution of India in case of prolonged incarceration and undue delay in trial; learned counsel further relied upon decision of the Supreme Court passed on 13.07.2023 in **SLP(Crl.) No(s).4169/2023** titled '**Rabi Prakash Vs. The State of Odisha**', wherein the Supreme Court opined that prolonged incarceration militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

09. Learned counsel for the applicant has placed reliance on the judgment dated 18.03.2025 passed by this Court in **Bail App No.214/2024** titled '**Azhar Din v. UT of J&K**' wherein it is held that delay in trial by itself constitutes denial of justice and violative of Article 21 of the Constitution of India and learned counsel submits that the applicant is entitled to be released on bail in view of protracted trial and incarceration and also bleak possibility of early completion of trial.

10. It is further submitted by learned counsel for the applicant that in view of absence of criminal antecedents and that the fact that the applicant is in custody for the last three and a half years, the conditions of Section 37 of the NDPS Act

can be dispensed with as is held by the Supreme Court in SLP (Crl.) No.6690/2022 titled of '**Dheeraj Kumar Shukla v. The State of Uttar Pradesh**' decided on **25.01.2023**.

11. Learned counsel for the applicant would further argue that the court below has taken two different considerations while granting bail to Bashir Ahmad in his case, whereas the applicant's bail application was rejected in this case and prayed that the applicant, even if, alleged contraband was of commercial nature was entitled to be admitted to bail on the basis of the law settled by the supreme court in the aforesaid judgments and prayed that the applicant be admitted to bail.

12. Learned counsel for the respondent, *ex adverso*, vehemently argued that the applicant is not only involved in an offence under NDPS Act involving commercial quantity of the seized contraband but he has been found involved in the illicit traffic of the narcotics as is revealed from his bank account, wherein money has been transferred from one Bashir Ahmad, who used to smuggle the contrabands from Kashmir and whose bank transactions also revealed that lakhs of rupees have been transferred from the suppliers from Kashmir to the accounts of the aforesaid Bashir Ahmad with whom the applicant herein had also transactions as revealed from the bank account of the applicant herein. He stated that the amount of Rs.5.77 lakhs had been transferred to the account of the applicant by co-accused Bashir Ahmad. Therefore, it cannot be said that the applicant is by no stretch of imagination an innocent to be granted bail,

particularly, when statutory bar of Section 37 of the NDPS Act is applicable to the case. It was finally prayed that the application be rejected.

13. The Apex Court judgment passed in *K.A. Najeeb (supra)* had laid down to harmonise the fundamental right of liberty vis-a-vis statutory provisions of rigors/embargo to the grant of bail in special statutes. Para 18 of the judgment, being relevant is extracted as under:

“18. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

14. Admittedly, the alleged recovery of Psychotropic Substance falls within the commercial quantity, thus, rigors/embargo of Section 37 of NDPS Act, comes into play. Therefore, unless the Court records the satisfaction on the twin requirements as envisaged under Section 37 of the NDPS Act, it is not legally permissible to grant concession of bail in view of the law laid down by the Apex Court in a recent judgment. 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. xxxxxxxx

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 advertng 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.....”

15. 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.

16. In view of applicability of the statutory provisions of Section 37 of the NDPS Act which bars grant of bail unless the two conditions are satisfied,

firstly, that the public prosecutor is to be heard before grant of such bail and secondly that there are reasons to record satisfaction that the petitioner was not involved in the commission of the offences. Though the public prosecutor has been heard by the court below and also the Government Advocate by this court, however, there is no material placed on record so as to satisfy this court with regard to meet the second condition that the petitioner has not committed the offence. The evidence brought on record by the Investigating Agency is sufficient to state that the petitioner was prima facie involved in the commission of the offences of which he is charged. The plea raised by the counsel for the applicant that applicant be admitted to bail on the ground of prolonged incarceration, is rejected, in view of the preceding analysis.

17. For the aforesaid reasons, this court is of the considered opinion that the applicant is not entitled to be enlarged on bail as he is alleged to have committed the illicit traffic of the contraband, that too, with huge recovery of the contraband, falling under commercial quantity. Having regard to the nature and gravity of the offences of which applicant is charged/accused and their impact on the society at large, economy and security of the State, the application is found to be misconceived and is liable to be rejected.

18. Viewed thus, the application for grant of bail moved by the applicant herein is, thus, **dismissed**, alongwith connected application(s).

(M A CHOWDHARY)
JUDGE

Jammu
10.12.2025
Raj Kumar

Whether the order is reportable? :Yes