

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl A (D) No.23/2025

Reserved on: 08.09.2025
Pronounced on: 18.09.2025

**Mudasir Ahmed Dar, Age 35
years, S/O Ghulam Mohd Dar
R/O Banda, District Shopian,
Kashmir.**

.... Appellant(s)

**At present District Jail Rohtak
Haryana through his mother
Hanifa Banoo, Age 60 years
W/O Ghulam Mohd Dar R/O
Banda, District Shopian,
Kashmir**

Through: - Mr. I. H. Bhat, Advocate.
Mr. Akeel Wani, Advocate.

V/s

**National Investigating Agency,
Jammu.**

.... Respondent(s)

Through: - Mr. Vishal Sharma, DSGI with Mr.
Eeshaan Dadhichi, CGSC.
Mr. Chandan Kumar Singh, Public
Prosecutor NIA.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Per: Sanjay Parihar-J

01. By this appeal, Order dated 19.04.2025 passed by court of Special Judge NIA Court Jammu (the 'trial court'), is called in question, by virtue of which, the appellant herein has been denied concession of bail in RC No.03/2020 under Section 120-B of IPC, Sections 17/40 of UAP Act and Sections 8/21/29 of NDPS Act, for which, the appellant was being tried by the said court.

02. It is primarily the case of the appellant that he has neither been involved in the alleged act of unauthorised or illegal possession of narcotic substances nor has he facilitated their transportation. It is further his case that he has not in any manner participated in converting the proceeds derived from the alleged sale of narcotic substances towards any unlawful activities. The appellant submits that he has made no disclosure statement, nor has any recovery been effected from his possession.
03. The prosecution case originates from the incident dated 11.06.2020, wherein a *Creta* vehicle was intercepted and a recovery of ₹20,00,000/- in cash along with 3 kg 95 gms of Heroin was effected, leading to registration of the FIR in question. Pursuant to further disclosure statements of co-accused persons, recoveries of 15 kg of Heroin and ₹1.15 crore in cash were made from the possession of various co-accused. The prosecution's case is that a total of 21 kg of Heroin and cash amounting to ₹1.35 crore were recovered, which were being funnelled for unlawful activities. It is the further case of the appellant that he came to be arrested on 01.03.2021, whereafter a supplementary charge-sheet was filed against him. By that stage, six accused persons had already been charge-sheeted on 05.12.2020. In the supplementary charge-sheet, it has been alleged that the appellant had provided his *Scorpio* vehicle to co-accused Afaq Ahmad Wani, who allegedly utilised the said vehicle for transportation and sale of narcotic substances. It is further alleged that the appellant was in

full knowledge of the activities of the said co-accused, who were allegedly indulging in narco-terror activities.

04. The trial Court, while considering the application of the appellant for the grant of bail, vide the order impugned, declined to extend the concession of bail. The denial was essentially premised on the ground that the appellant already stood charged with offences under Sections 17 and 40 of the Unlawful Activities (Prevention) Act, 1967, which fall within the embargo created by Section 43(D) of the said Act. The Court held that once a charge has been framed, there exists prima facie material to warrant a view that the case against the appellant is true and therefore, he is required to face trial.

05. The trial Court further noticed that some of the prosecution witnesses had already been examined, one of whom, has categorically deposed that the money realised from the sale of narcotic substances was being funnelled across the border for the purpose of financing terror-related activities. It also came to light that some of the co-accused have close connections with elements across the border who are actively engaged in orchestrating terrorist activities and sustaining insurgency in the region. Said witness further deposed that narcotic substances were being sold to the appellant by the co-accused for further sale. On the strength of such material, the trial Court concluded that there existed reasonable grounds for believing that the accusations against the

appellant were not, *prima facie*, untrue, and accordingly dismissed the bail application.

06. Upon notice, the respondent filed its response controverting the grounds urged in the appeal. It has been contended that the appellant was actively engaged as a narcotic drug peddler, providing logistic support to the co-accused. He was a close associate of co-accused Afaq Ahmed Wani and Showkat Ahmad Parray, and would assist them in generating funds through the illegal sale of narcotic substances. During the investigation, it surfaced that the co-accused were utilising a Mahindra Scorpio vehicle bearing registration No. JK02CE-1221, belonging to the appellant, for transportation and smuggling of narcotic drugs. Statements of co-accused and prosecution witnesses, it is submitted, clearly narrate the role of the appellant in the syndicate, showing that he was not only aware of but also involved in unauthorised possession and transportation of narcotic substances (Heroin), and that proceeds generated from such sales were being diverted towards unlawful activities. The respondent has further urged that, though no recovery has been made directly from the appellant, there exists sufficient material on record to show that he was in full knowledge of the operations of the syndicate and had consciously provided his vehicle to facilitate the same. His role in providing logistic support to terror activities in the Union Territory of Jammu and Kashmir has been highlighted. It is further pointed out that the trial against the appellant is in progress, and as many

as sixteen witnesses have already been examined. Given the nature of the accusations and the evidence already led, the appellant does not deserve the concession of bail.

07. Counsel for the appellant, while reiterating the grounds urged in the appeal, contended that the appellant has remained in custody for more than three years and that his mere act of providing his vehicle to the co-accused cannot, by itself, lead to the presumption that he was in knowledge of the alleged activities of the co-accused. Emphasising the testimony of the approver as well as other prosecution witnesses, it was urged that even from the narration of the approver, there is not a scintilla of evidence implicating the appellant in the activities undertaken by the co-accused. It was further argued that the appellant had, in fact, demanded the return of his vehicle from the co-accused, and instead, co-accused Afaq Ahmed Wani provided his *Creta* vehicle to the appellant for a few days, which circumstance itself demonstrates that the appellant was not privy to or aware of the activities being carried out by the said co-accused. Learned counsel would submit that merely because the appellant has been charged under Sections 17 and 40 of the UAP Act, the same would not disentitle him to bail, particularly when the evidence so far recorded during trial does not establish any nexus of the appellant with the commission of the alleged offences.

08. It was further urged on behalf of the appellant that the prosecution has failed to bring on record any substantive material against the

appellant and, as such, the allegations against him are without evidentiary foundation. Continuation of his custody, therefore, is contrary to the settled principle of law that an accused is presumed to be innocent until proved guilty. Counsel would further submit that the rigour of Section 43(D) of the UAP Act stands diluted once the prosecution has led its evidence in trial, and upon cross-examination of the witnesses, when the appellant has been able to demonstrate that no grave suspicion survives qua his involvement, he is entitled to the concession of bail.

09. Per contra, Mr. Vishal Sharma, learned DSGI, argued that in the present case, the co-accused has already been denied the concession of bail by this Court, and in view of the law laid down in **Gurwinder Singh vs. State of Punjab, (2024) 5 SCC 403**, the appellant too does not deserve such a concession. When confronted with the query as to whether there is any disclosure statement and consequent recovery attributable to the appellant, the answer was fairly in the negative. Nevertheless, it was strenuously urged that although the appellant may not be centrally involved in the entire transaction, his peripheral role cannot be ruled out at this stage. It was submitted that since the trial is in progress and the prosecution is yet to lead further evidence, the release of the appellant on bail at this juncture may frustrate the course of the trial. This contention, however, was refuted by the learned counsel for the appellant on the ground that the allegations against the co-accused were of a far more serious nature, whereas,

qua the appellant, the material collected during the investigation and adduced during trial do not prima facie indicate his direct involvement in the commission of the alleged offence.

10. We have given our thoughtful consideration to the submissions made at the bar and have gone through the record.
11. We have been given to understand that, along with the appellant, as many as fourteen other accused are facing trial. Out of them, two accused, namely Islam Ul Haq Peer and Romesh Kumar, have already been enlarged on bail, whereas bail to the co-accused, Syed Iftikhar Andrabi, has been declined by this very Bench.
12. There is no quarrel with the legal proposition that while considering the plea of '*parity*' in the matter of bail, the focus must necessarily be on the specific role attributed to the accused. Merely observing that another accused, who was granted bail, was armed with a similar weapon, is not sufficient to establish a case for bail on the ground of '*parity*'. In determining '*parity*', the role assigned to the accused, his position in relation to the incident, and his nexus with the victim are factors of paramount importance. Reference in this regard can be drawn to **Neeru Yadav v. State of U.P., (2021) 6 SCC 230**. Even otherwise, learned counsel for the appellant has emphasised that the appellant is not seeking bail solely on the ground of '*parity*', but rather on the strength of his own case, which is distinguishable on the facts. It was urged that neither has any recovery been effected at his instance, nor has the

investigating agency been able to establish any link connecting him with the alleged act of raising funds for terrorist activities.

13. The record reveals that the appellant stands charged under Sections 17 and 40 of the Unlawful Activities (Prevention) Act, 1967. Both provisions deal with punishment for raising funds for terrorist activities, the distinction being that Section 17 contemplates funds raised for the commission of a terrorist act, while Section 40 relates to raising funds for a terrorist organisation. Upon a careful review of the respondent's reply, it is apparent that there is no assertion of any disclosure made by the appellant regarding the recovery or raising of funds. Nor has any narcotic substance been recovered at his behest. The only allegation against the appellant is that he provided his Scorpio vehicle to a co-accused, who allegedly used it for transportation and the sale of narcotics. **There is no material to suggest that the appellant himself indulged in the sale of narcotics, much less to identify to whom such sale was effected or whether he realised any funds therefrom.** In fact, it was fairly conceded by the respondent during arguments that the gravamen against the appellant is limited to the fact that his vehicle was knowingly made available to the co-accused, who used it for unlawful purposes. On that basis alone, the appellant has been sought to be roped in as a conspirator. It is pertinent to note that the appellant has neither been charged with conspiracy under Section 120-B IPC nor with abetment under Section 29 of the NDPS Act. In such

circumstances, his case must be considered strictly based on the facts and material produced against him.

14. The respondents have placed reliance upon **Gurwinder Singh v. State of Punjab, 2024 (5) SCC 403**. In that case, the Supreme Court distinguished its earlier decision in **Union of India v. K.A. Najeeb, (2021) 8 SCC 713**, wherein the accused had been in custody for more than five years, the trial had been severed, and the co-accused had already been convicted and sentenced. The Court found that continued incarceration would amount to a punishment longer than that ultimately awarded to the co-accused, and hence bail was granted. In **Gurwinder Singh**, however, the trial was ongoing, 22 witnesses, including protected witnesses, had been examined, and it was held that mere delay in trial in grave offences cannot by itself justify the grant of bail. These authorities, therefore, operate in distinct factual settings.

15. In the present case, reliance on Section 43-D(5) of the UAP Act by the respondent is misplaced. That provision restricts the grant of bail where the Court finds reasonable grounds to believe that accusations under Chapters IV and VI of the Act are prima facie true. However, the material on record discloses no grave suspicion against the appellant of raising funds for terrorist acts or organisations. The only incriminating circumstance is that his vehicle was used by a co-accused, without any link evidence to show that he had prior knowledge of unlawful activities being undertaken by the co-accused. The telephonic records referred to

by the respondent may at best suggest peripheral contact or awareness, but fall short of constituting prima facie evidence of his involvement in raising funds or supporting terrorist activities. There is neither recovery at his behest nor prima facie evidence of his direct participation in the narcotics trade.

16. We are, thus, of the considered view that on examination of material on record, we find there are no reasonable grounds for believing that the accusation against the appellant are prima facie true. We are conscious of the fact that at the stage of grant or refusal of bail, the scope of inquiry is limited and there cannot be any sifting of evidence. But given the material available on record, the appellant deserves to be released on bail and the trial court in our considered view failed to exercise discretion of bail in favour of appellant as the order of rejection of bail does not proceed on sound reasoning.
17. Consequently, by accepting this appeal, the order of rejection of bail of appellant is set aside, the appellant is directed to be released on bail on furnishing surety to the tune of Rs.One lac and personal bond of the like amount subject to the conditions that may be laid by trial court.
18. Anything said hereinabove, on the merits of the case, shall be construed as an expression of this Court limited to the extent of disposal of this appeal and shall not prejudice either of the parties

in trial. Appeal is, thus, **disposed of** in the like manner. Copy of this order be notified to court below for sequential steps.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
18.09.2025
Narinder

Whether order is speaking? : Yes
Whether order is reportable? : Yes

