

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

**Case No.: -Bail App No. 161/2025  
CrIM No. 971/2025**

*Date of pronouncement: 15.10.2025*

*Uploaded on: 16.10.2025*

Munish Kumar age 35 years,  
S/o Prem Kumar  
through his wife Pooja Verma age  
34 years  
R/o Village Parthal, Tehsil Katra,  
District Reasi

**...Petitioner(s)**

Through: - Mr. Mehtab Gulzar, Advocate

**V/s**

Union Territory of Jammu &  
Kashmir through SHO, Police  
Station Katra

**... Respondent(s)**

Through: - Mr. Sumeet Bhatia, GA

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

**ORDER**

1. The petitioner, through the medium of the aforesaid application, seeks enlargement on bail from case FIR No. 43/2024 under Sections 8, 21, 22, 27A and 29 of NDPS Act, on the premise that he is innocent who has been falsely implicated. The alleged recovery of 41.02 grams of heroin falls in the intermediate quantity and not commercial one, thus bar under Section 37 NDPS is not attracted. Even the allegations are not backed by any independent evidence. The prosecution had cited three witnesses to prove charge under Section 27A of the NDPS Act, but they have shown ignorance of the incident. That the solitary transaction regarding the possession of contraband will not amount to financing illicit trafficking. That

the bail application has been dismissed by the Principal Sessions Judge, Reasi in a casual and mechanical manner, without appreciating the law on subject. The petitioner claims to be in custody since the inception of the FIR and that given the trial so conducted, merely because the petitioner is involved in non-bailable offence, the bail has not to be denied.

2. As per the police charge-sheet, it was on 08.02.2024 at around 9:15 PM an Eco Sport car bearing registration No. JK02BD-1900 was coming from Katra towards Reasi and was driven by the petitioner Munish Kumar, who was accompanied by one more person, namely, Prem Kumar, who was in disoriented condition and upon search, from the possession of the petitioner heroin like substance kept in a transparent polythene in left pocket of his jeans came to be recovered, which on being weighed on the electronic instrument was found weighing 41.02 grams approximately, whereas from the other person there was recovery of 7.41 grams of the contraband type heroin. It is further stated that during questioning the petitioner disclosed to have hidden cash in a bag in his almira and on his disclosure cash amounting to ₹ 3,06,000/- came to be recovered. It was, therefore, concluded that the petitioner was involved in sale-purchase of drugs in the area and upon forensic examination the contraband was found to be Diacetyl Morphine (Heroin).
3. It is further alleged that the petitioner was in contact with other purchasers, namely, Rahul Kumar and Ravi Kumar, who were its consumers and were ready to give statement under Section

161Cr.P.C and ultimately their statements were recorded. It was, therefore, alleged that the petitioner was indulging in drug trafficking and also was in possession of intermediate quantity of contraband, which he intend to supply to the innocent consumers, who had fallen to the drug addiction and the recovery of amount at his instance showed that he was financing the illicit drug activity, whose trial is underway. That given the application of Section 27A of the NDPS Act, there is strong case against the petitioner to invite bar under Section 37 of the NDPS Act and so the petitioner is not entitled to bail as a matter of right and his bail application has been rightly declined by the trial court.

4. Learned counsel for the petitioner has relied upon the Supreme Court judgment passed in case titled ***“State of West Bengal v. Rakesh Singh @ Rakesh Kumar Singh”*** cited as **2022 LiveLaw (SC) 580** and the judgement passed by the coordinate Bench of this Court in a petition being CRM(M) No. 157/2025 c/w Bail App No. 297/2024 and WP(Crl) No. 87/2024 titled ***“Mohd. Aslam & ors. v. UT of J&K”***, decided on 19.08.2025, wherein it was argued that mere sale or purchase of drugs does not automatically qualify as financing illicit racket and the prosecution must clearly establish financial links and intent to invoke Section 27-A NDPS Act
5. It was further argued that the two independent witnesses alleged to have been the consumers of drugs, from whom the petitioner had realized money which was recovered at the disclosure of the petitioner. Those two witnesses have denied the prosecution

version, whereas one more witness has already expired. Thus, the whole case of the prosecution regarding application of Section 27A of the NDPS Act is groundless and the petitioner is denied the concession of bail on arbitrary and illegal grounds.

6. It was contended by learned counsel for the respondent that the matter is under trial and that any observation on the merits of the case is bound to prejudice the prosecution in trial of the accused.
7. Heard learned counsel for the parties and have gone through the response and the police report.
8. The extent of quantity recovered from the possession of the petitioner is stated to be 41.02 grams, which admittedly comes within the ambit of intermediate quantity, which act is punishable with imprisonment for a term which may extend to 10 years with fine which may extend to ₹ 1 lakh, whereas Section 37 of the NDPS Act enacts bar on granting of bail to a person accused of an offence of possession involving the commercial quantity. This act has been enacted with a view to make stringent provisions for the control and regulation of the operation relevant to the NDPS Act. That being underlying object of the Act, Section 37 of the Act in negative terms limits the scope of the applicability of the provisions of the code regarding bail and it cannot be held that powers to grant bail are not subject to the limitation. Sub-section 2 of Section 37 of the Act specifically contends that the limitation of grant of bail in Clause-1 are in addition to the limitations imposed under the code, which means that if the offence committed by the petitioner falls

within the ambit of sub-section 1, then the concession of bail is to be denied, but in case the offence is not covered under sub-section 1, then the limitation would be the one which are prescribed under the code.

9. Since the incident has taken place on 08.02.2024 and at that time, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 had not come into force, which has been made applicable after 01.07.2024, therefore, even if the present application is to be treated as the one in terms of the provisions of BNSS, 2023, even then in terms of Sub-section 2 of Section 37 of the NDPS Act, the limitation imposed by any other law for the time being in force on granting of bail would also apply to the cases arising out of the provisions of the NDPS Act. In that background, the provisions of Code of Criminal Procedure, 1973 as well as the one incorporated in Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 clearly enact bar in granting of bail in offences punishable with death or imprisonment for life and there is no bar in other cases involving offence of non-bailable nature.

10. So, given the position of law as in vogue, in cases relating to possession of intermediate quantity of narcotic substance, the same being non-bailable offence, the principle of bail is to be governed by the Code of Criminal Procedure and the BNSS, 2023, depending upon the nature of accusation, inasmuch as, the discretion to be exercised in such cases has to be governed by the principle that bail is rule and its denial being exception. So given the nature of quantity

recovered from the possession of the accused being intermediate quantity as well as the petitioner having been in custody since 08.02.2024, whose trial is underway, in which some of the witnesses have been examined, his continuation in custody with regard to possession of the intermediate quantity of the contraband would work at his great disadvantage being presumed to be innocent until proved guilty, bail is not to be denied to him as a mark of punishment.

- 11.** Now adverting to the application of Section 27A of the NDPS Act. Having regard to the nature of accusation, in this regard the counsel for the petitioner has placed reliance on the case of **Rakesh Singh (Supra)** to advance the plea that Section 27-A is not applicable and given the nature of the quantity recovered, the rigour of Section 37 NDPS Act has no application. In this Authority, there was recovery of 76 grams of cocaine. It was alleged that the accused is financing illicit trafficking of contraband and also harboring offenders, dispelling the application of Section 27A of the NDPS Act, it was held as under:-

**“8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, prima facie we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word “trafficking” connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs.**

**Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our prima facie opinion, not fall within the mischief of Section 27A of the NDPS Act. In this connection, one may refer to a decision of the Bombay High Court rendered on October 7, 2020 in Criminal Bail Application (Stamp) No. 2386 of 2020 (Reha Chakraborty v. The Union of India State of Maharashtra).”**

12. Given the aforesaid legal position, mere sale-purchase of drugs does not automatically qualify as financing illegal trafficking and here the allegation was that the petitioner is indulging in sale of narcotics. There is not even a whisper in the allegations that the petitioner is financing such acts. Now financing would involve continuous activity of providing funds to the drug peddlers for not only obtaining contraband from respective sources, but also would envisage its procurement, warehousing and then releasing the same for onward sale, which in the given case is not reflected in the charge-sheet. The only allegation is that the petitioner was found in possession of 41.02 grams of narcotic substance and later on at his behest an amount of ₹ 3,06,000/- was recovered. Whereas according to the counsel for the petitioner the two witnesses who alleged to have obtained the narcotic substance from the petitioner, have denied such purchase, which casts suspicion in the very application of offence under Section 27A of the NDPS Act against the petitioner.

**13.** Having regard to the continuous detention of the petitioner and the stage of the trial in which some of the material witnesses have been examined, without prejudicing the case of the respondent, this court finds that continuous detention of the petitioner in the custody is not going to help the case of the prosecution. The petitioner has not caused any impediment in his trial and there is no past history of he having indulged in such activity. The allegation of financing and harbouring of drug offenders appears to be without any legal basis and the allegation of the petitioner indulging in financing any illicit trafficking of drugs, that too in the given set of accusation, appears to be not made out. In that background the petitioner deserves to be granted concession of bail.

**14.** In view of the foregoing discussion, the Court finds that the petitioner has successfully made out a strong prima facie case for the grant of bail. Accordingly, the bail application is allowed, and the petitioner is admitted to bail subject to the following conditions:

- i. he shall furnish two solvent sureties in the amount of ₹1,00,000 each to the satisfaction of trial court, along with a personal bond of the like amount;
- ii. he shall not, in any manner, attempt to contact or influence any of the prosecution witnesses during the pendency of the trial;
- iii. he shall appear before the learned trial court on each date of hearing unless exempted for valid reasons;
- iv. he shall not indulge in any offence of a similar nature; and

v. he shall surrender his passport, if any, before the learned trial court and shall not leave the country without prior permission of the court.

15. It is, however, clarified that any observation made herein is only for the purpose of deciding the present bail application and shall not be construed as an expression of opinion on the merits of the case.

16. The application is accordingly **disposed of**.

(Sanjay Parihar)  
Judge

JAMMU  
15.10.2025  
Pawan Angotra

Whether the order is speaking? : Yes/No

Whether the order is reportable? : Yes/No

