

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

**Case No:- Bail App No. 164/2025 c/w**  
**CRM(M) No. 503/2025**

*Date of Pronouncement : 10.10.2025*

*Uploaded on: 14.10.2025*

1. Bagh Hussain, aged 24-year, S/o Bashir Ahmed, R/o Near Govt. Middle School, Village Mahi Chak, Tehsil and District Kathua. .... **Petitioner(s)**
2. Murad Ali, aged 25 years, S/o Makhan Din, R/o ChhaniChahikr, District Kathua.

Through:- Mr. Amjed Khan, Advocate

V/s

1. Union Territory of J&K Through Superintendent of Police, Central Jail, Kot Bhalwal Jammu. .... **Respondent(s)**
2. State House Officer, Police Station Gagwal, District Samba.

Through:- Mr. P.D. Singh, Dy. AG vice  
Mr. Vishal Bharti, Dy. AG

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

**JUDGMENT**

**CRM(M) No. 503/2025**

1. After arguing for a while, learned counsel for the petitioner submits that he does not want to press the instant petition, as such, seeks withdrawal of the same. His Statement is taken on record.
2. In view of the submission made by learned counsel for the petitioner, the instant petition is dismissed as not pressed along with connected application(s), if any.

**Bail App No. 164/2025**

1. The petitioners are aggrieved of order dated 29.05.2025 passed by the learned Additional Sessions Judge, Samba (hereinafter referred to as “the trial Court”), whereby the concession of bail has been declined to them in case FIR No. 140/2024 of Police Station Ghagwal. They seek enlargement on bail primarily on the ground that the challan has already been presented and is pending adjudication before the trial Court arising out of an incident dated 19.10.2024.
2. It is alleged that on the said date, while the petitioners were travelling in a Swift car bearing Registration No. JK08P/5080, they were intercepted by the police at the naka point of Police Post Rajpura. On being signalled to stop, they allegedly attempted to flee; however, they were apprehended, and upon search, recovery of contraband was effected. From petitioner Bhag Hussain @ Bhagu, a transparent polythene pouch containing 150/160 grams of heroin (Chitta) along with ₹1,000 in cash was recovered from the right pocket of his grey-coloured trousers. From co-petitioner Murad Ali @ Madu, a similar pouch containing 105/115 grams of heroin (Chitta) was recovered from the left pocket of his blue-coloured trousers. The said substances were allegedly possessed without any lawful authority, leading to registration of FIR No. 140/2024 under Sections 8, 21, 22, 25 and 29 of the NDPS Act at Police Station Ghagwal, Samba.
3. During the investigation, the quantity recovered from petitioner Murad Ali was found to be 110.02 grams, and from Bhag Hussain, 150.03 grams. The investigating agency concluded that the petitioners had a commercial

quantity of contraband and had entered into a criminal conspiracy to commit offences under the NDPS Act. Consequently, a charge-sheet was laid against them for offences under Sections 8/21/22/25/29 NDPS Act, and formal charges were framed vide order dated 29.05.2025.

4. Learned counsel for the petitioners contended that the petitioners have been falsely implicated, and there exists no material to substantiate the prosecution's claim that the possession of contraband amounted to a commercial quantity. It was argued that the recovery shown is individual and independent in nature, with no evidence to suggest that the possession was joint or shared. It was further urged that in the absence of any cogent proof of conspiracy or common intention, the rigour of Section 37 of the NDPS Act would not operate against the petitioners.

#### 5. **Petitioner's Argument**

- **Reliance:**

- *Hardeep Singh v. UT of J&K* (2021) 4 JKJ 1
- *Amar Singh Ramjibhai Barot v. State of Gujarat*, AIR 2005 SC 4248

- **Key Submission:**

- The recovery from each accused was individual, not joint.
- Therefore, their quantities cannot be clubbed to make it "commercial quantity."
- If taken individually, each recovery would be "intermediate quantity."

#### 6. **Respondent's (Prosecution's) Argument**

- **Main Contention:**

- The accused are charged with Section 29 (criminal conspiracy) NDPS Act.
- This implies joint knowledge and possession — possession by one extends to the other.
- Therefore, the total contraband must be treated as joint possession, making it a commercial quantity ( $\geq 250$  grams).
- Consequently, Section 37 applies, barring bail.

**7. Judicial Precedent – *Abdul Hamid v. UT of J&K*, B.A. No. 261/2024 D.O.D 07.04.2025**

• **Facts:**

- Two accused travelling in a car; recoveries of 104.89 g and 106.86 g of heroin, respectively.

• **Prosecution's Claim:**

- Clubbing brings the total within commercial quantity.

• **Court's Finding:**

- Even though both were together and shared a common intention, recovery was individual.
- Hence, quantity to be treated separately → intermediate quantity.
- Section 37 not applicable, and bail granted.

**8. Judicial Precedent – *Hardeep Singh's Case "supra"***

• **Facts:**

- Recovery: 143 g from one accused, 257 g from another.

• **Held:**

- No evidence of criminal conspiracy under Section 29 NDPS Act.
- Possession treated as individual, not joint.

- Accordingly, each recovery fell within intermediate quantity and Section 37 NDPS Act did not apply.
- Charges under Sections 25 & 29 quashed, and bail granted.

## **9. Overall Legal Position Emerging**

1. Clubbed recovery (to reach “commercial quantity”) is impermissible unless there is clear evidence of shared possession or conspiracy (Section 29).
2. In the absence of such evidence, each accused’s recovery must be assessed individually.
3. Intermediate quantity → Section 37 NDPS Act (special bail restriction) does not apply.
4. Hence, the normal principles of bail (Section 439 CrPC) would govern.

10. So, given the aforesaid legal position and the factual background enumerated hereinabove, the case of the petitioners is to be examined. Admittedly, both petitioners were found together in a Swift car, and upon their search, 110.02 grams of contraband were recovered from petitioner Murad Ali, and 150.03 grams from petitioner Bagh Hussain. The prosecution claims that since they were travelling together, a grave suspicion arises that they had conspired to transport a commercial quantity of contraband, because when both recoveries are clubbed, the total exceeds 250 grams, i.e., the threshold for commercial quantity.

11. It is not the case of the prosecution that the search was conducted pursuant to prior information. Rather, it appears to be a case of chance recovery. The prosecution also laid stress on the alleged exchange of telephonic calls between the petitioners, suggesting that they were planning to possess or transport the contraband illegally.
12. However, in the response filed to this application, the respondents have not placed even an iota of material to suggest that both the petitioners had any prior acquaintance, were jointly indulging in possession of narcotic substances, or had any history of similar offences.
13. It further appears from the record that on the date of the incident, i.e., 19.10.2024, when the petitioners were arrested, the recovery was not affected from the vehicle. Had that been so, one could have inferred that both were in conscious possession of a narcotic substance of commercial nature. Here, however, the recovery was made individually, upon their personal search. Therefore, it cannot be assumed or presumed that one petitioner was aware of the contraband possessed by the other.
14. Since the carrying and possession were individual acts, *prima facie*, the prosecution cannot claim that possession of one petitioner extends to the other. In this backdrop, and considering the nature of the evidence collected during the investigation, there does not appear to be any grave suspicion that the petitioners had a commercial quantity of contraband.

15. Once possession is taken on an individual basis, the case falls outside the ambit of Section 37 of the NDPS Act, which applies only in cases involving commercial quantity. To attract Section 29 of the NDPS Act, the prosecution must demonstrate prima facie material suggesting prior knowledge, common intention, or conspiracy between the accused persons. No such material is forthcoming in the present case. Likewise, there is no evidence to suggest joint possession.
16. Section 8 of the NDPS Act emphasises conscious possession, thus, the prosecution must lay a foundation that a particular accused was consciously in possession of a specific quantity of contraband, and that such quantity was commercial. In the present case, such a foundation is lacking.
17. In this background, since Section 37 of the NDPS Act loses its applicability and the petitioners have been in custody since 19.10.2024, their continued incarceration is not likely to further the cause of justice. Rather, it would amount to pre-trial punishment.
18. It is true that there has been an alarming rise in the use and trafficking of narcotic substances. However, in the absence of any material to show the petitioners past involvement in similar activities, the concession of bail cannot be denied to them. After all, they are presumed innocent until proven guilty.
19. Though presumptions under Sections 35 and 54 of the NDPS Act exist regarding culpable mental state and possession, such presumptions arise only once foundational facts are established during trial. At this stage, it would be premature to invoke such

presumptions. The prosecution shall, of course, be at liberty to prove the allegations at trial. Moreover, if the petitioners indulge in repetition of similar offences, the prosecution shall be free to move for cancellation of bail.

20. In view of the foregoing discussion, a case for grant of bail is made out. Accordingly, both the petitioners are admitted to bail, subject to their furnishing sureties in the sum of ₹1,00,000/- (Rupees One Lakh only) each and personal bonds of the like amount, to the satisfaction of the learned Trial Court. The Trial Court shall be at liberty to impose such additional conditions as may be necessary to ensure the petitioners' presence during trial and to prevent any misuse of the concession of bail.

21. The bail application, along with all connected miscellaneous applications, stands ***disposed of*** accordingly.

22. Let a copy of this order be transmitted to the learned trial Court for compliance.

(SANJAY PARIHAR)  
JUDGE

JAMMU  
10.10.2025  
Rahul Sharma

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes