

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No: Bail App No. 202/2025

Date of pronouncement:-08.10.2025

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**Mehmood Zahid, Aged 23 years,
S/o Khalid Mehraj Qurashi,
R/o WatnarKokernag, District Anantnag.**

At present District Jail, Amphalla.

.... Petitioner/Applicant(s)

Through:- Mr. Priyanshu Sharma, Advocate.

V/s

**UT of Jammu & Kashmir Through Police
Station, ANTF, Gandhi Nagar, Jammu.**

.....Respondent(s)

Through:- Mr. Pawan Dev Singh, Dy.AG.

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

ORDER

1. The petitioner, *Mehmood Zahid*, is facing trial in **FIR No. 14 of 2021** for offences punishable under **Sections 8/20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985** (for short, "*the Act*") before the Court of the **Special Judge (NDPS Cases), Jammu**. The prosecution case, in brief, is that on **19.12.2021**, the respondent-Agency, acting upon reliable information, learnt that the petitioner, along with co-accused **Azher Din**, was transporting contraband in vehicle **No. JK12A-6379** from Srinagar to Jammu, with the intention of handing over the consignment to another co-accused, who was driving a **Maruti**

Ignis bearing Registration No. JK02CR-2163. Both vehicles were allegedly parked near the **Overhead Railway Bridge, Sainik Colony, Jammu.**

2. Pursuant to the said information, a raid was conducted at the spot, where three persons were found seated in the Ignis car, co-accused **Bunny Gupta** was at the driver's seat while the petitioner and another person occupied the rear seat. All three were apprehended, and upon search, two packets containing *chars-like substance* were recovered from beneath the driver's seat of the Ignis car, weighing **3.564 kilograms (inclusive of packing material)** and **3.422 kilograms (net weight)**. Since the accused persons failed to offer any plausible explanation regarding possession of the contraband, the present case came to be registered. The investigation revealed that the petitioner and his co-brother had transported the consignment from Srinagar and delivered it to co-accused Bunny Gupta for onward sale and distribution.
3. Upon completion of the investigation, a **charge sheet** was filed against the petitioner and the co-accused on **06.06.2022**, and the trial is presently in progress. The petitioner's earlier bail application came to be dismissed by the trial Court on the ground that the recovery involved a *commercial quantity* of contraband, thereby attracting the **rigour of Section 37 of the NDPS Act**. It was further noted that although one of the co-accused had been released on bail, the petitioner's case, in view of the gravity of allegations, did not

merit similar indulgence, leading to rejection of his application and consequent filing of the present petition before this Court.

4. The respondents have resisted the bail plea by contending that the petitioner is not entitled to bail as a matter of right, particularly when the investigation has substantiated the commission of offences under Sections 8/20/29 of the Act. It is urged that the recovery pertains to *commercial quantity*, and hence the statutory embargo under **Section 37** stands squarely attracted. It is further submitted that framing of a charge against the petitioner for possession and trafficking of narcotic substances constitutes a grave circumstance, militating against the grant of bail.
5. ***Per contra***, learned counsel for the petitioner submits that a **Co-ordinate Bench** of this Court, by order dated **18.03.2025**, has already granted bail to co-accused **Azher Din**, whose case stands on an identical footing with that of the present petitioner. It is further urged that even co-accused **Bunny Gupta** has been enlarged on bail on health grounds, and therefore, on the touchstone of **parity**, the petitioner too deserves similar treatment. Reliance is also placed on the judgment of this Court rendered in **Mohd. Roshan vs. Union of India & Anr.**, decided on **23.05.2025**, wherein it has been held that prolonged incarceration, coupled with the unlikelihood of early conclusion of trial, warrants the grant of bail notwithstanding the restrictions under Section 37 of the Act, to uphold the mandate of **Article 21 of the Constitution of India**.

6. I have given my thoughtful consideration to the submissions made at the Bar and carefully examined the material available on record.
7. The petitioner, along with other co-accused, stands charge-sheeted on **06.06.2022** for commission of offences punishable under **Sections 8/20/29 of the NDPS Act, 1985**. It was pointed out during the course of the hearing that out of 22 witnesses cited by the prosecution, only 07 have been examined so far, whereas the petitioner has been in custody since **19.12.2021** as an under-trial prisoner. The right to speedy trial being an intrinsic facet of **Article 21 of the Constitution of India**, prolonged incarceration without conclusion of trial impinges upon that fundamental guarantee. That said, the recovery involved in the present case pertains to a *commercial quantity* of contraband, which attracts the rigour of **Section 37 of the NDPS Act**. The Hon'ble Supreme Court in *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*, **2023 Live Law (SC) 260**, has held that when statutory provisions curtail an accused's right to bail and fetter judicial discretion, as under Section 37 of the Act, such restriction embodies a balance between two competing values — the liberty of the accused, grounded in the presumption of innocence, and the collective interest of society.
8. It has been contended that the petitioner has not, at any stage, caused any impediment in the progress of the trial. Considering the pace at which the trial is proceeding, the apprehension of the petitioner that the proceedings are likely to consume substantial time cannot be brushed aside. This Court is conscious that the trial

is being conducted before the **Court of Special Judge (NDPS Cases), Jammu**, which has been constituted specifically for expeditious disposal of cases under the NDPS Act. However, it has been brought to the notice of this Court that the said Court is overburdened with more than **700 cases pending for over five years**, and a total pendency exceeding **2000 cases**. In such circumstances, a delay in the conclusion of the trial appears inevitable unless an additional Special Court is constituted to deal exclusively with NDPS matters. While such pendency by itself may not entitle the petitioner to bail, the **ground of parity** pressed into service by the learned counsel does warrant consideration, in view of the fact that a Co-ordinate Bench of this Court, vide order dated **18.03.2025**, has already granted bail to the petitioner's co-brother and co-accused **Azher Din**, whose case stands on an identical footing.

9. Upon examination of the record, it emerges that the allegation against the petitioner and co-accused Azher Din is that they transported *charas* from Srinagar for delivery to co-accused **Bunny Gupta** for further transportation outside the Union Territory of Jammu and Kashmir. At the time of interception, the petitioner and Azher Din were seated on the rear seat of the offending vehicle, whereas the recovery of contraband was effected from beneath the driver's seat occupied by Bunny Gupta.
10. The prosecution seeks to invoke **Section 29** of the Act to allege criminal conspiracy; however, except for the petitioner's presence

in the vehicle, no tangible material has been shown to establish his direct control over or possession of the recovered contraband. The respondents have relied upon call detail records (CDRs) to suggest complicity, yet the same, at this stage, do not conclusively demonstrate conscious possession or control.

11. Though the recovery of *commercial quantity* renders the accusations grave, once a co-accused standing on an identical footing has already been admitted to bail, and such order has attained finality, denial of similar relief to the petitioner would amount to discriminatory treatment, contrary to the settled principle of **parity**. The learned trial Court, while declining bail, appears not to have appreciated this aspect in proper perspective.
12. It is trite that Section 37 of the Act, though restrictive, cannot be construed in a manner that defeats the fundamental right to life and personal liberty enshrined in Article 21. The prolonged incarceration of the petitioner, coupled with the pendency of trial and the bail already granted to a similarly placed co-accused, persuades this Court to hold that the petitioner has made out a strong **prima facie case for the grant of bail**.
13. Accordingly, the **bail application is allowed**. The petitioner, *Mehmood Zahid*, is ordered to be released on bail subject to his furnishing **two sureties in the sum of ₹1,00,000/- each** and a **personal bond 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 petitioner's

presence during trial and to prevent any misuse of the concession of bail.

14. The bail application, along with connected miscellaneous applications, stands *disposed of* accordingly.
15. Let a copy of this order be transmitted to the learned trial Court for compliance.

(SANJAY PARIHAR)
JUDGE

JAMMU
08.10.2025
Ram Krishan

Whether the order is speaking?	Yes/No
Whether the order is reportable?	Yes/No

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