

S. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

(virtual mode)

Bail App No. 34/2025

Zeeshan Nisar

...Petitioner(s)

Through:

Mr. Fayaz Ahmad Sodagar, adv.

VS.

UT through SSP Ang and ors

...Respondent(s)

Through:

Mr. Waseem Gul, GA

CORAM:

Hon'ble Mr. Justice Mohd. Yousuf Wani, Judge.ORDER

27.10.25

1. Through the medium of the instant successive bail petition filed in terms of provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short), corresponding to Section 439 of the Code of Criminal Procedure, 1973 (now repealed), the petitioner has sought the concession of bail in his favour in case FIR No. 124 of 2024 of Police Station Anantnag U/ss 8/21, 29 NDPS Act., on the grounds *inter alia* that he is innocent and has been falsely implicated in the case FIR in question. That he has been implicated in the case FIR on mere allegation of his being present in the vehicle wherefrom contraband substance has allegedly been recovered. That the Investigating Agency did not collect any evidence to establish his conscious possession in respect of alleged contraband. That the final report/challan in the case FIR has already been presented before the competent trial court and is pending disposal. That he has been implicated in the case FIR by the invocation of provisions of Section 29 of the NDPS Act as a co-conspirator without any concrete basis. That he has been arrested in the case on 14.06.2024 and since then has been suffering incarceration on the basis of his false implication in the case. That he has been implicated as co-

accused in the case FIR on the ground of his being also present in the vehicle along with main accused by invoking the provisions of Section 29 of the NDPS Act and none of the witnesses examined during investigation has revealed his any role other than his being present in the vehicle with the other accused. That his mere sitting in the vehicle wherefrom the alleged contraband has been seized does not constitute conscious possession under law. That he was neither the owner of the vehicle nor was driving the same which facts are sufficient to infer that he cannot be supposed to be in the conscious possession of the alleged contraband. That the only evidence relied upon by the prosecution against him, is, his own alleged statement recorded during the investigation while his being in custody which is not relevant at all as same has not led the Investigating agency to any further recovery. That none of the prosecution witnesses has stated during investigation that he had any knowledge about the presence of the contraband in the vehicle and as such even if the prosecution evidence as recorded during investigation remains unrebutted, same shall not lead to his conviction. That the alleged Bill, the supply order in respect of the sale to some Delhi firm, the receipt of tile cleaner are not in his name which is sufficient to discredit the allegation of his being a co-conspirator in respect of the alleged Narcotic substance. That he has been also charged by the learned trial court u/s 8/21, 29 NDPS Act vide order dated 02.12.2024 and the matter is pending trial presently at the stage of recording of prosecution evidence. That the investigating agency for his implication, in the case has also relied upon the statement of the co-accused (accused No.1) which is also not admissible in terms of provisions of Section 67 of NDPS Act., in the facts and circumstances of the case, when no further recovery or a new fact has been ascertained on the basis of the same, attributable to him. That while considering the prosecution evidence in totality there exists no “reasonable ground” for his involvement in the offences charged against him. That the statement of the

co-accused and also his own statement alleged to have been made by them in police custody and without being followed by any other recovery are not admissible in evidence under Sections, 25, 26, 27 of the Evidence Act. That the statement of owner of the transport carrier to the effect that the accused No.1 namely Ubair Majeed had placed the order for supply with the Delhi based firm and the bills etc are also in his name, clearly unjustify his involvement in the case. That during the pendency of the main bail application filed before the learned trial court on 11.12.2024, an application for interim bail on medical grounds was also filed but the learned trial court while disposing of the main bail application vide order dated 27.02.2025 did not address to the medical grounds. That on 14.02.2025 while being lodged in the Jail he suffered very acute chest pain whereupon he was taken to the Government Medical College Hospital, Anantnag, where the Doctors diagnosed him a case of heart stroke. That the *Trop-T* test was done along with *ECG and Trop-T* test showed his reading as 16.49. That he on account of his heart problem requires thorough specialized medical treatment in connection whereof he has to undergo some related tests, such as, *TMT*, *ECHO* and *Angiography* as advised by the doctors which is not possible without the association of his family members. That his heart problem is likely to get worsened in jail and there is every threat to his life. That he has been suffering from incarceration since last more than a year and his case is still at the stage of recording of prosecution evidence. That he shall abide by any conditions that may imposed by this court in case of his enlargement on bail.

2. The respondents/UT have resisted the bail application of the petitioner through the medium of objections filed by learned AAG, on the grounds that petitioner/accused is involved in heinous offences punishable under Section 8/21, 29 of NDPS Act and, as such, does not deserve the concession of bail. That the menace of drug addiction has engulfed the whole society, so much so that a havoc has been created which justifies the

dealing of the drug offenders with strong hand. That the liberty of the petitioner/accused has not been curtailed but only restricted in accordance with the procedure established under law. That there are apprehensions of misuse of concession of bail by the petitioner by tampering with the prosecution evidence and absconding at the trial. That the offences committed by the petitioner-accused are highly anti-social. That the court is needed to strike a balance between individual liberty and the interests of the whole society. That there is every apprehension that petitioner shall not face the trial in case enlarged on bail under the fear of stringent punishment provided for the offences charged against him.

3. I have heard the learned counsel for both the parties.
4. Learned counsel for the petitioner-accused while reiterating his stand already taken in the bail petition submitted that the petitioner has been falsely and frivolously implicated in the case FIR when he is innocent and has not committed the alleged offences. That in the facts and circumstances of the case, no conscious possession in relation to the alleged Narcotic substance can be attributed to him. That mere fact of petitioner's sitting in the vehicle of the accused No.1 being one of his known persons cannot be the basis for attributing conscious possession with respect to him. The learned counsel contended that it is a settled legal position that conscious possession pre-supposes both physical as well as mental possession. It was further contended by the learned counsel that presumptions under sections, 34 & 54 of the NDPS Act cannot operate without any basis and the prosecution before invoking the statutory presumptions has to prove the foundational facts of its case, which has not been done in the instant case. Learned counsel further submitted that the petitioner-accused has been implicated solely on the basis of alleged disclosure statements of co-accused and as well of his own attributed to them to have been made while they were in police custody,

which are not admissible under law, for the simple reason that said disclosures attributed to them to have been made during police custody have not been followed by any sort of recovery or discovery of a new fact.

He further contended that the trial in the case is going on since last more than one year, and the case, is still at the stage of recording of prosecution evidence. Learned counsel further contended that petitioner-accused has been suffering from heart problem who needs a formal documented investigation and treatment to save his life which is possible only when he is at large and in the association of his family members. Learned counsel further contended that in the facts and circumstances of the case, the petitioner-accused cannot be implicated on the basis of the alleged conspiracy when nothing has been recovered from his possession or even at his instance.

Learned counsel submitted that the petitioner is deeply rooted in the society and there is no apprehension of his misusing the concession of bail. That petitioner-accused shall abide by any conditions as to furnishing of surety and bail bonds etc in case he is enlarged on bail.

The learned counsel for the petitioner in support of his arguments placed reliance on the judgments cited as *“Ramanand vs State of Himachal Pradesh Cr. MP (M) 1820/2023 decided on 4th August, 2023; Sukhdev Singh @ Sukh vs State of Punjab, CRM-M- 984/2021 decided on 19th April, 2022; Kamalijeet Singh vs. Sh. H.K. Pandey (Intelligence Officer), decided on 4th March, 2005; Galiv Hussain vs State GNCT of Delhi Bail Appl. 3425/2022 decided on 25th April, 2023; Jiya Lal vs State of Haryana, CRM-M 65182-2023, decided on 9th January, 2024; State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh, CRIMINAL APPEAL No. 923 of 2022, decided on 11th July, 2022; “Amit Ranjan vs Narcotics Control Bureau, Delhi”, Bail Appln. 1189/2020, decided on 23rd May, 2022”*.

5. *Per contra*, the learned AAG for the respondents very vehemently submitted that petitioner-accused does not deserve the concession of bail as he has already been charged at the trial of the case u/ss 8/21, 29 of NDPS Act. That sufficient evidence was collected by the Investigating officer during investigation of the case against the petitioner as a co-conspirator of the offences. The learned UT counsel submitted that the petitioner-accused was boarding vehicle along with the co-accused and were carrying the Narcotic substance containing codeine, phosphate in liquid form in three canes weighing in total 27.800 Kgs. That the petitioner himself made a disclosure during investigation of the case regarding his involvement in the case along with the co-accused. That the co-accused also made similar disclosure regarding his own as well as petitioner's involvement in the case. The learned counsel submitted that statements of the both the accused persons are relevant u/s 67 of NDPS Act. Learned UT counsel further submitted that the case of the petitioner attracts the bar u/s 37 of the NDPS Act as commercial quantity of manufactured drug consisting codeine, phosphate-a, Narcotic substance as a constituent. He submitted that more than 27 Kgs of the liquid containing codeine, phosphate came to be recovered from vehicle on the instant date which was being driven by the main accused and also boarded by the present petitioner. He further submitted that in the facts and circumstances of the case, every reasonable and prudent man can believe the conspiracy between both the accused regarding commission of the crime. He further contended that the offenses committed by the petitioner-accused, as co-conspirator are highly anti-social as the menace of drug addiction has eaten the vitals of the society. That younger generation especially the school children have fallen easy prey of drug addiction which needs to be dealt with strong hand. Learned AAG further contended that earlier bail application moved by the present petitioner was rejected by the learned trial court through a detailed order dated 27.02.2025 and there appears no justification under law for enlargement of

the petitioner. The learned UT counsel further contended that the health issues of the petitioner can be taken care of by the jail authorities by providing him adequate treatment as and when required. The learned AAG prayed for rejection of the bail application.

6. Before proceeding ahead, it is felt to appropriate to reproduce the facts of the prosecution case relevant for disposal of this application:-

“The allegations against the accused persons is that on 14.06.2024 Police Station Anantnag received a written docket from ASI Bashir Ahmad No.204/CR to the effect that he along with other police personnel was on naka duty at GBS Crossing K.P. Road. That during naka, the driver of Swift vehicle bearing registration No.HR29AT-3269 which was coming from Laizbal towards Khanabal was asked to stop, however the driver tried to flee from spot. That, the police party chased him and tactfully apprehended him on spot along with the said vehicle. That during preliminary questioning the driver of the vehicle disclosed his name as Ubaid Majeed Bhat S/O Abdul Majeed Bhat R/O Channpora Srinagar. Besides driver one more person was boarded in the said vehicle who disclosed his name as Zeeshan Nisar Nadaf S/O Nisar Ahmad Nadaf R/O Channpora, Srinagar (the petitioner). That during search of vehicle three canes containing psychotropic substance in the form of codeinephosphate were recovered. That one cane contained about 8 to 10 litres, 2nd cane contained about 9 to 10 litres and 3rd cane contained about 4 to 5 liters. That during questioning for carrying of said psychotropic substance they did not put forth any plausible explanation and in fact they intended to sell the same among young generations on higher rates in order to get them addicted. That on receipt of said docket FIR No. 124/2024 for commission of offences under section 8/21 & 29 of NDPS Act was registered and investigation commenced. That during investigation the I.O visited the spot and prepared the site map. That the statements of witnesses familiar with the case were recorded under law. That during investigation recovery as well as seizure memos of psychotropic substance were prepared on spot. That during the course of investigation seized psychotropic substance was put to weight by digital weighing device. That the first, second and third canes were weighed 11.830 kilograms, 10.660 kilograms and 5.310 kilograms respectively. That the total weight found was 27.800 kilograms. That the psychotropic substance was sealed on spot and impression of nut bolt was put on the canes

which were marked as A, B & C. that the samples were taken from seized psychotropic substance and sent to FSL Srinagar for analysis. That the offences under section 8/21 & 29 of NDPS Act were established against both the accused persons. That after completion of investigation challan was presented before the court”.

7. The final report/challan arising out of the case FIR is presently pending disposal before the learned Special Court under the NDPS Act Anantnag and reported to be presently at the stage of recording of prosecution evidence, as charge has already been framed by the trial court against both the accused persons u/ss 8/21, 29 of the NDPS Act.

8. The learned trial court vide its order dated 27.02.2025 passed on the earlier application of the petitioner has declined the concession of bail to him on the grounds that the material on record indicates his *prima facie* involvement in the case involving commercial quantity of contraband substance who has not accordingly satisfied the limited parameters allowing the bail in terms of section 37 of the NDPS Act. The learned trial court while rejecting the earlier bail application has also observed that it is not safe to hold that accused has effectively established that there are “reasonable grounds” to believe that he is not guilty of the offences alleged against him warranting his admission to bail.

9. Keeping in view the perusal of the instant successive bail petition, the objections filed in rebuttal by learned state counsel, the scanned copy of the trial court record especially the statements of prosecution witnesses examined during investigation of the case and the consideration of the rival arguments advanced on both the sides, this court without making any comment regarding the merits of the case is of the opinion that it may meet the ends of justice in case the petitioner-accused is admitted to bail in the case FIR in question subject to some reasonable terms and conditions.

10. Admittedly the petitioner-accused came to be arrested in the case FIR in question on 14.06.2024 owing to the fact of his being boarded in the vehicle owned and driven by co-accused and from which the contraband narcotic substance was allegedly recovered. He

stands involved in the case on the basis of the aforesaid fact coupled with the alleged disclosure made by him and the co-accused during the investigation of the case while both of them being in custody. The learned counsel for the petitioner-accused during his arguments inter alia contended that such alleged disclosures basing the involvement of the petitioner are not admissible under law for not having led to any subsequent recovery or discovery of a new fact. The learned counsel also during his arguments contended that the presumptions in terms of section 35 and 54 NDPS Act can be invoked only after the investigation collects sufficient and credible evidence in support of the foundational facts of the case and not otherwise. The learned counsel during his arguments also contended that in the facts and circumstances of the case no reasonable ground appear to be made out regarding involvement of the petitioner-accused.

A criminal court while recording his satisfaction as to whether there appear “reasonable grounds” of involvement of an accused in the commission of an offense attracting the bar in terms of provisions of Section 37 NDPS Act., has to use his discretion in a judicious manner so that no miscarriage of justice happens either by grant of bail or by denial of the same.

The “reasonable grounds” of involvement can be inferred from the facts and circumstances of the case especially, the nature of the evidence. The Court is supposed to consider the broader probabilities to reach its supposition regarding the existence of reasonable grounds of involvement of the accused.

The words “reasonable grounds” cannot be read to mean proved as used in ‘*Bharatiya Sakshya Adhiniyam*’. Such an interpretation would in my opinion set at naught the power vested in a court to grant bail pending trial.

The expression “reasonable grounds” would obviously mean something more than mere suspicion and conjectures and something less than proof. It would necessarily mean such grounds or material that would prima facie enable a person of ordinary prudence to believe that the accused is or is not guilty.

It is no doubt true that the object of the legislation of such disabling provisions is to prevent the offenders from immediately granting bail in heinous offences. In this view of the matter, the court is required to examine the material placed before it and then to arrive at a conclusion that there exist “reasonable grounds” to believe that accused is guilty or not guilty

The “reasonable grounds” would vary from case to case and from one accused to another. What may be reasonable in one case may not be so in another and therefore the words “reasonable grounds” cannot, on account of a discretion vested in the court, be put into a straight-jacket. Each case would have to be dealt with and examined on its own facts and decided keeping in view the mandate of law. The consideration at the time of taking up of the bail application for disposal is different from the consideration adopted at the end of the trial for holding an accused guilty or not guilty. In considering an application for bail, court is not required to conduct a preliminary trial. The Courts while deciding bail applications will be traversing beyond their ambit and would be exceeding their limit of functions if they engage themselves in discovering the guilt or innocence of the accused which can only be determined at the trial stage. The courts should not go at a tangent in order to find out the possible excuses for grant bail. Whether there are “reasonable grounds” or not is the question which must be decided judicially, that is to say there should be some tangible evidence on which the Court might come to the conclusion that if unrebutted, the accused might be convicted. Whether there are reasonable grounds for believing that a person is guilty of such an offence depends on what evidence is offered by the prosecution to the charge against him.

In order to come to the conclusion, that a person is guilty, the Court must consider the evidence which if unrebutted may lead to conclusion that the charge against him stands proved and cannot unjustifiably hold that there are “reasonable grounds” for believing that he is guilty. It is a settled position of law that the real question whether there are reasonable grounds for believing that a person is guilty of offences attracting bar under Section 37 NDPS Act, depends upon what evidence is offered by the prosecution to prove the charge against him.

While reaching such conclusion, the Court must consider the nature and character of evidence against him.

11. The petitioner-accused during his custody in the jail as an under trial in the instant case is reported to have suffered heard stroke.

12. The petitioner-accused has sought the concession of bail through the instant successive application before this court on the health grounds also apart from the merits of the case. He is reported to have pleaded the health grounds also in the earlier application before the learned trial court which suffered denial. The petitioner-accused has been in custody in the case since last more than 16 months. The learned trial court after framing the charge against both the accused including present petitioner vide order dated 02.12.2024 called the prosecution evidence upon pleading not guilty by them. As per the perusal of scanned copy of the trial court record submitted to this court under No. 112/NDPS/Anantnag dated 15.05.2025 of the office of the learned trial court, no prosecution witness appears to have been examined at the trial till that date. As such the trial of the case is likely to take much time for its conclusion.

13. The learned counsel for the petitioner-accused during his arguments also contended that the Investigating officer during investigation of the case observed mandatory provisions under NDPS Act in breach which gives the petitioner a right to seek bail.

14. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the

Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

15. In **State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447**, the Hon'ble Apex Court has held, "basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

16. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:

- i. The judicial discretion must be exercised with the utmost care and circumspection;
- ii. That the Court must duly consider the nature and the circumstances of the case;
- iii. Reasonable apprehension of the witnesses being tampered;
- iv. Investigation being hampered or
- v. The judicial process being impeded or subverted.
- vi. The liberty of an individual must be balanced against the larger interests of the society and the State.
- vii. The court must weigh in the judicial scales, pros and cons varying from case to case.
- viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
- ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- x. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.
- xi. The facts and circumstances of the case play a predominant role.

17. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 1632**, referred to the following extract from the American Jurisprudence having bearing on the subject of bail,

“where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail”.

18. It has been laid down by the Hon'ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation AIR 2012 SC 830** at Para 14 of its Judgment as under:-

*14) “In bail applications, generally, it has been laid down from the earliest times that the **object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail.** The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that **punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. **From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether***

the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

19. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon’ble Apex Court cited as **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40** in which the bail was granted to the appellant who was involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference:-

“24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”

“25. The provisions of [Cr.P.C.](#) confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

20. In **Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280**, the Hon’ble Apex Court has laid down the special factors for taking into

consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

21. The observations of the Hon’ble Apex Court laid down in **State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21** at para 18 of the judgment also deserve a needful mention:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* and *Gurcharan Singh v. State (Delhi Admn.)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.”

22. The Hon'ble Apex Court in Sanjay Chandra's case cited *supra* has *inter alia* held at para 40 of the judgment, "the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required."

23. The Hon'ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98**, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been *inter alia* observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

24. For the foregoing discussion and without commenting on the merits of the case which obviously shall be the subject matter of the final disposal of the trial case, petitioner-accused is admitted to bail in the instant case FIR bearing no. 124/2024 of Police Station, Anantnag under section 8/21, 29 NDPS Act, subject to his furnishing surety and personal bonds to the tune of Rs. One lac each (surety bond Rs. One lac to be furnished by two sureties from amongst the relatives of the

petitioner-accused each liable to the extent of Rs. fifty thousand) respectively to the satisfaction of the learned trial court and the superintendent of jail concerned. This order shall however, be subject to the following conditions:-

- i) The petitioner-accused shall remain punctual at the trial of the case.
- ii) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any of the unexamined prosecution witnesses so as to dissuade them from making their factual statements at the trial.
- iii) The Petitioner shall not leave the limits of UT of J&K without the prior permission of the learned trial court.
- iv) The Petitioner shall not repeat the commission of any crime.

25. In case the requisite surety bonds are furnished to the satisfaction of the learned trial court and duly attested, a formal release order shall be issued by learned trial court directing the release of the petitioner-accused from the place of his lodgment in the instant case FIR bearing No. 124/24 of P/S Anantnag, subject to petitioner's furnishing of personal bond in the amount of Rs. One lac to the satisfaction of the Superintendent of jail concerned.

26. Learned trial court shall be competent to proceed against the petitioner-accused in terms of provisions of sections 491 and 492 BNSS corresponding to Sections 446, 446-A of the Code in the event of violation of any bail conditions.

27. Disposed of.

(Mohd. Yousuf Wani)
Judge

Jammu:
27.10.2025
"Ayaz"

- i) Whether the order is speaking ? Yes
- ii) Whether approved for law journal ? Yes