

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 01.12.2025

Pronounced on: 11.12.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

Bail App No.78/2025

ARIF RASHID BHAT

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Rizwan-ul-Zaman, Advocate.

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - None.

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

JUDGMENT

1) The petitioner has invoked jurisdiction of this Court under Section 483 of BNSS for grant of bail in a case arising out of FIR No.02/2022 for offences under Sections 8/15 and 29 of NDPS Act registered with Police Station, Anti-Narcotics Task Force, Kashmir.

2) As per case of the prosecution, on 26.09.2022, a specific information was received by the police of Police Station, Anti-Narcotics Task Force, Kashmir, through reliable sources that the petitioner is transporting contraband substance (Poppy Straw) in his vehicle bearing

No.JK03D-6050 (i10) for the purpose of selling the same to youth and other drug peddlers of Mir Bazar area. On receipt of this information, FIR No.02/2022 for offences under Section 8/15 of NDPS Act was registered and investigation of the case was set into motion.

3) During the course of investigation of the case, the police team proceeded to Wanpoh Anantnag and a Naka was laid on Khudwani Wanpoh Bye pass Bridge, where the vehicle in question was intercepted. The driver of the vehicle disclosed his name as Arif Rashid Bhat (the petitioner herein). The petitioner was subjected to search in presence of the Executive Magistrate and his cellphone with two Sim cards, two ATM cards, one election card, one Pan card and one black coloured wallet were recovered from his personal search. Besides this, five nylon bags containing Poppy Straw like substance were recovered from the vehicle in question. The same, upon weighing, were found to be 85.325 kgs. The recovered Poppy Straw was produced before the Executive Magistrate and two samples (30 grams each) were drawn from each of the recovered bags of Poppy Straw. The remaining quantity of recovered contraband substance was sealed in five different bags. The samples drawn were also sealed whereafter the same were sent to FSL, Srinagar, for chemical analysis. The vehicle in question was also seized.

4) During investigation of the case, it also surfaced that co-accused Mysir Ahmad had delivered the consignment of contraband to the petitioner and that the said accused was in contact with the petitioner. In this regard, CDR of the cellphones of the two accused were analyzed. Co-accused Mysir Ahmad was also arrested on 28.11.2022.

5) During further investigation of the case, one more accused, namely, Imtiyaz Ahmad Ganai, was also found to be involved in the offence. During CDR analysis, nexus between the three accused was established and it was found that they were in contact with each other. Thus, offences under Section 8/15 and 29 of NDPS Act were found established against the petitioner and co-accused Mysir Ahmad and the challan was laid against them before the trial court whereas third accused, namely, Imtiyaz Ahmad Ganai, has absconded and against him the Investigating Agency is proposing to file a supplementary challan.

6) It appears that vide order dated 29.04.2023, charges for offences under Section 8/15 and 29 of the NDPS Act were framed against the accused including the petitioner herein and the trial of the case was set into motion. It also appears that the petitioner had applied for grant of bail before the learned trial court but his application has been dismissed by the said Court in terms of order dated 04.02.2025.

7) It has been contended by the petitioner that till date the statements of ten prosecution witnesses have been recorded but they have not stated anything incriminating against him. It has been further contended that no independent witness has been cited as a witness to the recovery. It has also been contended that there are contradictions in the prosecution case and the statements made by the witnesses during trial of the case, inasmuch as, as per prosecution case, the recovery of the contraband substance had taken place at the place of occurrence whereas the prosecution witnesses have stated that they signed the memo of recovery in the office of Anti-Narcotics Task Force. It has been further averred that the seals appearing on the bags of the recovered contraband do not tally with the seal impression. It is also submitted that there are glaring contradictions in the statements of the prosecution witnesses on essential aspects of the case and that the mandatory provisions of the NDPS Act have not been adhered to by the Investigating Agency during the course of investigation of the case.

8) On the basis of aforesaid contentions, it is being claimed that there are reasonable grounds for believing that the petitioner has not committed the offence relating to possession of commercial quantity of contraband substance,

as such, the rigour of Section 37 of NDPS Act is not applicable to the present case.

9) The respondent, in its reply to the bail application, has, besides narrating the facts mentioned in the charge sheet, submitted that the petitioner is involved in possession and transportation of contraband substance which poses a serious threat to the health of the adolescence and in case the petitioner is enlarged on bail, it will have serious impact upon the public interest and the local economy as the offence committed by the petitioner is against the society.

10) I have heard learned counsel for the petitioner and perused record of the case including the trial court record.

11) In the instant case, the commercial quantity of contraband has been recovered from the possession of the petitioner. So far as grant of bail in cases involving possession of commercial quantity of contraband is concerned, the Court has to adhere to the procedure and guidelines provided under the provisions contained in Section 37 of the NDPS Act, which reads as under:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) *no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) *The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”*

From a perusal of the aforesaid provision, it is clear that in the cases involving offences relating to commercial quantity of contraband substances, in addition to the restrictions imposed by the Code of Criminal Procedure for grant of bail, certain other conditions have been imposed on the power of the Court to grant bail. These conditions include a prior notice to the Public Prosecutor who has to be given an opportunity to oppose the bail application. Further the Court has to be satisfied that there are reasonable grounds for believing that the person seeking bail is not guilty of such offence and that he is not likely to commit any offence while on bail.

12) The expression “reasonable grounds” has been discussed by the Supreme Court in the case of **Collector of Customs, New Delhi vs. Ahmadalieva Nodira**, (2004) 3 SCC 549, in the following manner:

“7.The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused-respondent is concerned, are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”

13) Again, in **State of Kerala and others vs. Rajesh and others**, (2020) 12 SCC 122, the Supreme Court has observed as under:

“21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal

approach in the matter of bail under the NDPS Act is indeed uncalled for.”

14) The Supreme Court has recently, while relying upon the aforesaid two judgments, in the case of **Narcotics Control Bureau vs. Mohit Aggarwal**, 2022 Live Law (SC) 613, observed as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

15) From the aforesaid analysis of the law on the subject it is clear that for the limited purpose of considering the bail application of the petitioner, this Court has to consider the material on record so as to ascertain whether such facts and circumstances are existing that can persuade the Court to

believe that the accused person has not committed the offence for which he has been booked. The Court has to be satisfied that there are credible and plausible grounds for believing that the accused is not involved in the offence.

16) In the light of foregoing analysis of law on the subject, let us now consider the material on record. Before undertaking such an exercise, it has to be borne in mind that at the time of considering a plea for grant of bail, the Court is not expected to meticulously appreciate the evidence led during trial of the case. It is only if the Court, on the basis of cursory look at the evidence led by the prosecution, comes to a *prima facie* conclusion that the accused is not guilty of the offence for which he has been charged, that the accused would be entitled to grant of bail in a case where he has been booked for possession of commercial quantity of the contraband substance.

17) As per the prosecution case, the petitioner was found transporting 85.325 kgs of Poppy Straw in his car which was intercepted by the police and the recovery of the contraband substance was effected from it. Besides the Executive Magistrate and the official of the Legal Metrology Department, the Investigation Officer, Sub Inspector Noor Ahmad, Constable Sajad Ahmad and Head Constable Bilal Ahmad happen to be the witnesses to the recovery

memo/seizure memo in respect of the contraband substance. A perusal of the statements of PWs Sub Inspector Noor Ahmad, ASI Mohammad Sharief, Head Constable Bilal Ahmad and Constable Sajad Ahmad would reveal that all these witnesses have, *prima facie*, supported the prosecution case and have in one voice stated that the recovery of the contraband substance was effected from the vehicle that was under the charge of the petitioner. Merely because there may be certain contradictions in the statements of these witnesses regarding inconsequential aspects of the matter, it cannot be stated, particularly at this stage, that they have not supported the prosecution version. Even the official of the Legal Metrology Department, PW Ghulam Nabi Ganie has supported the prosecution case to the extent of preparation of memo of recovery and drawing of samples on spot, though in his cross-examination he has stated that he had reached the spot after the police had already recovered the contraband substance. Even the Executive Magistrate, PW Shahzad Ahmad Khan has, *prima facie*, supported the prosecution case while making his statement during trial of the case.

18) As has been already discussed, unless it is shown that there are reasonable grounds to believe that an accused is not guilty of offence relating to possession of commercial

quantity of contraband substance, he/she is not entitled to grant of bail in view of the rigour contained in Section 37 of the NDPS Act. Reasonable grounds would mean credible and plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. There may be contradictions here and there in the statements of prosecution witnesses but for arriving at a conclusion as to whether the accused has committed an offence under NDPS Act or not, this Court is not expected to weigh the evidence but it has to undertake the exercise of appreciating the evidence only for the limited purpose of releasing the accused on bail. A detailed analysis of the material on record has to be avoided at this stage.

19) When the evidence on record, as discussed hereinbefore, is seen in the light of these legal parameters, this Court is unable to persuade itself to frame an opinion that the petitioner is not guilty of offence of possession of commercial quantity of contraband substance. Thus, the essential condition for grant of bail as contained in Section 37 of the NDPS Act is not satisfied in the present case. The petitioner, as such, is not entitled to bail.

20) For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly. Anything said

in this order shall not be construed as expression of opinion
on merits of the case.

(Sanjay Dhar)
Judge

SRINAGAR

11.12.2025

“Bhat Altaf-Secy”

*Whether the **Judgement** is speaking:* **Yes**

*Whether the **Judgement** is reportable:* **Yes**

