

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

Reserved on: 28.11.2025

Pronounced on: 05.12.2025

Uploaded on: 05.12.2025

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

**Bail App 118/2025
CrIM No. 897/2025**

AYAZ AHMAD BHAT

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

Through: - Mr. Waseem Aslam, Advocate.

Vs.

UNION TERRITORY OF J&K THROUGH SHO P/S ANANTNAG

...RESPONDENT(S)

Through: - Mr. Illyas Laway, GA.

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

JUDGMENT

- 1) The petitioner, through the medium of the instant petition, has invoked jurisdiction of this Court under Section 483 of the BNSS seeking bail in a case arising out of FIR No. 93/2024 for offences under Sections 8/21/29 of the NDPS Act and Section 48 of the Excise Act, registered with Police Station Mattan, which is stated to be pending before the Court of the Special Judge, (Designated under NDPS Act), Anantnag (hereinafter referred to as "the trial court")

2) As per the prosecution case, on 15-09-2024, while the police party of Police Station Mattan had laid a naka and were checking vehicles near Bumzoo KP Road, they subjected the vehicle bearing Registration No. JK02DK-9333 (Innova) that was proceeding from Paibugh to Hutmuda to checking. During the search of the said vehicle, 11 bottles of Codeine each bottle containing 100 ML), 8 strips of DOLO-T Tablets, 07 strips of Omodol, 6 tins of Beer (God Father each containing 500 ml), 02 bottles of whisky (officer's choice each containing 375 ml), one bottle of whisky (Royal Stag containing 750 ml) and one bottle of wine (JK Special Whisky containing 250 ml) and cash Rs. 11500/- were recovered from the said vehicle. The petitioner along with co-accused Rafi Ahmad Malik and Lateef Ahmad Shah were travelling in the said vehicle at the relevant time.

3) On the basis of the docket sent by the naka party, an FIR was registered and the investigation was set into motion. During the course of investigation, the recovered items were seized and samples were drawn, sealed, and sent to the Forensic Science Laboratory (FSL) for chemical

analysis. Upon completion of the investigation, offences under Sections 8/21/29 of the NDPS Act and Section 48 of the Excise Act were found established against the petitioner and co-accused and they were taken into custody.

- 4) On 15-10-2025, the learned Trial Court framed charges for offences under Sections 8/21 read with Section 29 of the NDPS Act against the accused including the petitioner. It appears that during the course of trial, only one prosecution witness has been examined. It also appears that vide order dated 31-05-2025, the learned Trial Court has dismissed the application filed by the petitioner and co-accused for grant of bail.
- 5) The petitioner, has sought bail on the ground that the bar contained under Section 37 of the NDPS Act is not attracted to the present case. It is submitted that offences of possessing alcoholic beverages such as beer and whisky would fall under Excise Act, whereas recovery of Dolo-T and Omodol tablets does not attract provisions of the NDPS Act as they do not fall within the definition of contraband substances or manufactured drugs. It has been submitted that only recovery of 11 bottles of Codeine

Phosphate (100 ml each) is required to be taken into consideration while deciding the bail application of the petitioner

- 6) It is contended that out of 11 bottles, only 9 bottles of Codeine Phosphate (Phencycor) were sealed and sent to the FSL for chemical analysis, while the remaining 2 bottles were not forwarded for examination. On this basis, it is being argued that there is no evidence on record to show that the remaining 2 bottles of “Phencycor” contained Codeine Phosphate. Thus, at worst, the petitioner can be said to have been in possession of an intermediate quantity of Contraband substance. Hence, the provisions contained under Section 37 of the NDPS Act, are not attracted to the facts of the present case.
- 7) The respondents, have contested the bail application by filing their reply. In their reply, it has been submitted that the petitioner has been found to be in possession of a commercial quantity of contraband substance and therefore, the rigour of Section 37 is attracted to this case. It has been further contended that even the statement of one witness recorded during trial of the case, supports the

prosecution version. It is being further contended that in case, the petitioner is enlarged on bail at this juncture, there is every likelihood that he may abscond or tamper with prosecution evidence.

- 8) I have heard learned counsel for the parties and perused record of the case.
- 9) The main contention of the petitioner is that all 11 recovered bottles of “Phencycor” was 100 ml contents in each bottle have not been sent to the FSL for chemical analysis and as such, there is no evidence on record to show that all these 11 bottles contain the contraband substance namely “Codeine”. It has been submitted that only 09 out of 11 bottles have been sent to FSL for chemical analysis.
- 10) There is no doubt about the fact that only 9 bottles out of 11 recovered bottles of “Phencycor” have been sent to the FSL for chemical analysis. If we have a look at the memo of recovery in respect of these 11 bottles of “Phencycor” which has been prepared by the Investigating Officer at the time of recovery of the items from the possession of the petitioner, it is revealed that all the 11 bottles were having

same batch number: “9L408002”. The report submitted by the Chemical Analyst reveals that the sealed bottle of “Phencycor” which was subjected to chemical analysis was also having the same Batch Number i.e., 9L408002. Therefore, the sample which was sent by the Investigating Agency for chemical analysis was representing the sample of whole lot of 11 bottles recovered from the possession of the petitioner. The Supreme Court, in case titled *Vijendrajit Ayodhya Prasad Goel Vs. State of Bombay* reported in AIR 1953 SC 247, has held that when there is evidence on record to show that all the bottles recovered by the Police contained the same stuff, one bottle of whole lot would constitute the representative sample of whole recovered stuff. In the face of this position of law, it can safely be stated that there is evidence on record to show that all the 11 bottles which pertain to same Batch were containing the contraband drug “Codeine” as has been stated by the chemical analyst in his report.

- 11) In view of the above, it cannot be stated that there is no evidence on record to show that all the recovered bottles contain Codeine. Once it is found that there is prima facie

evidence to show that all the 11 bottles recovered contain Codeine, the quantity of Codeine recovered from the possession of the petitioner would fall within parameters of commercial quantity, as such, provisions contained in Section 37 of NDPS Act would come into play. Since the petitioner has failed to satisfy this Court that there are grounds for believing that he is not guilty of the offence involving possession of commercial quantity of contraband substance, as such, he is not entitled to bail at this stage.

- 12) For the reasons discussed hereinabove, I do not find any merit in this bail application. The same is, accordingly, **dismissed**.

(SANJAY DHAR)
JUDGE

Srinagar
05.12.2025
"Aasif"

Whether the Judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**