

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

Bail App 63/2024

UNION TERRITORY OF JAMMU AND
KASHMIR

...Appellant(s)/Petitioner(s)

Through: Mr. Jahingeer A Dar, GA

Vs.

IRSHAD AHMAD WANI AND ANR.

...Respondent(s)

Through: Mr. Aabid Hamid Pandit, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

26.11.2025

Through this application petitioners-UT of JK is seeking cancellation of the bail granted by the Trial court in case titled Irshad Ahmad Wani and another vs. UT of JK through Police Station, Bandipora. The bail granted by the Trial court has been challenged precisely on the following grounds:

- “(a) that the impugned order has been passed by the Trial court below without application of judicial mind as such the same cannot sustain in the eyes of law and as such merits setting aside.
- (b) That the accused is involved in heinous and non bailable offences involving commercial quantity under NDPS Act covered under FIR No. 10/2023 of Police Station Sumbal for offences under Sections 8.22r/w 29 NDPS Act.
- (c) That the Trial court has not appreciated the facts of the case. While passing the impugned order the trial court has touched the evidence and merits of the case so deeply which is not otherwise mandate of the law as such the impugned order serves setting aside.
- (d) That the investigating agency has gathered cogent evidence against the accused which will be adduced during the trial of the case however the trial court while passing the impugned order has completely overlooked this aspect of the case as well, as such the impugned order, deserves setting aside.
- (e) That the huge quantity of contraband i.e. Chlorphenamine Maleate & Codeine Phosphate Syrup, each weighing 100 ml, and in total 40 bottles have been recovered from accused besides the conduct of accused also reveals that they were indulged in the trade of trafficking of Narcotics as the said drug was in their

possession without any lawful justification but to carry its illicit trade among.

(f) That quantity of contraband which has been recovered from the possession of accused is Commercial quantity as per the Schedule of the statute and there was no cogent ground to grant bail to accused as Hon'ble High Court of J&K in Catena of Judgments have held that the accused in heinous offences of contraband should be dealt with iron hands which has serious impact/threat on society. While considering larger interest of society and alleged destruction of social environment in the hands of accused who is involved in the sale and supply of Narcotic drugs has to be taken serious note of which in turn would disentitled him from claiming concession of bail.

(g) That the impugned order passed by the Ld. Trial court is not only bad in law, but has been passed in contrast to the provisions of bail mandated US 37 of NDPS Act. The accused have been facing the trial for commercial quantity of the NDPS seized from their possession, and according to the rigor of the said provision of law accused ought not to be released until the trial is concluded.

(h) That the trial in the case in hand has reached to its fag end, as the prosecution have already examined 11 out of 12 PWs in just 12 months of time. Despite the fact that the accused are charged with offences having punishment about 20 years & fine up to 02 lakhs, the Ld. Trial court decided to release the accused on bail. The accused in the case in hand have preferred the successive bail application after the trial court had denied the first bail, application at the stage when prosecution had recorded 07 out of 12 PWs. There have been no change of circumstances except that few more witnesses have been examined. Therefore, allowing accused to walk out, amidst the trial, not only sets a bad example but is also in brazen conflict to the object & purpose of law under NDPS Act.

(i) That one of the observation made by Ld. Judge in his order states that the contraband seized hasn't been weighed on the spot, and the samples haven't been taken at the very place of occurrence. Whereas, truth is, the contraband has been seized in terms of 40 bottles of 100 ml each, and need not to be weighed. Also, the samples could be drawn only after breaking open the seal of the bottles before the Es. Magistrate, who is yet to depose before the trial court. Therefore, even after complying the procedure set out in Section 52 A, the trial court instead of giving chance, towards the end to explain inconsistencies, if any, spoke out unilaterally that the procedure hasn't been followed as prescribed, hence gave a clean slate to the accused to this extent.

(j) That it is a settled position of law, the Trial court should refrain from scrutinizing, or critically evaluating the evidence on record while deciding the question of bail. However, the Hon'ble Court has passed the impugned order by evaluating the evidence

at length without considering the fact that prosecution evidence isn't yet closed, and the trial of the case has been undergoing expeditiously. The Trial court, therefore, has ignored the precedence that the admission of accused on regular bail should be avoided by Courts where accused are facing trial for commercial quantity of NDPS.

(k) That the Hon'ble Trial court has released the accused on bail by resorting to the examination of evidence in piecemeal. Therefore, the impugned order passed is based on the inconclusive analysis of evidence, and irrational construction of law. It is undeniable a fact that some of the prosecution witnesses might have made contradictory statements, however, it is equally true and an established rule of law that mere contradictions in the statement of PWs shouldn't become a sole reason for a trial court to discard the entire testimony. Same has to be judged keeping in mind, both the positive as well as negative factors, which influence a witness in his deposition before the court.

(l) That it is a well suited law, the merits of a case cannot be touched while deciding the question of bail, let alone the testimony of witnesses. Once the accused plead their release on a mere fact that witnesses have not supported the prosecution case, and plead the witnesses assumably have failed to establish any case against the accused. That will directly as well indirectly be a question on the merits of the case in hand, and hence, at this stage, where prosecution hasn't produced all witnesses cannot be allowed to sustain, even partially.

(m) That is submitted, the Apex Court in catena of cases has observed for the guidance of courts that apart from other factors, courts while considering the question of bail of an accused must look into the aspects of gravity of an offence, severity of punishment and the societal impact on court's interference. There is no denying the fact that bail is rule and jail is an exception, however, the societal anguish, and seriousness of the crime are corresponding imperative factors. That is to say, no practice, however, sanctified by usage or generality be allowed to prevail if it invites any sense of injustice. The accused in the case in hand may have been under incarceration for a year now, but (needless to mention), the offence with which they are charged is punishable with sentence in terms of up to 20 years, and fine up to 02 lakh rupees, under the NDPS Act, which eventually has a bearing on the question of bail itself.

(n) That the Trial court has through its impugned order observed that on account of absence of any direct evidence, the prosecution has failed to establish the offence US 29 of NDPS Act. Hence, the Hon'ble Court has, on the basis of surmises and conjecture, absolved the accused of said charges. By so doing, the Court has failed to apply its mind as to the effect that conspiracy as an offence cannot be proved directly, and it is only consequential to circumstantial evidence.

(o) That the court granting bail should exercise its discretion in a judicious manner, and not as a matter of course, and at the stage of granting bail, a detailed examination and elaborate documentation of the merits of the case need not to be undertaken. That's to say, whatever material would require an appreciation shouldn't be referred to by parties until the evidence produced before court is dissected for the final outcome in a given case.

(p) That it is also submitted, the Hon'ble Trial court may after appreciation of evidence produced before it, decide either in conviction or acquittal of accused, however, the case is still at evidentiary stage as on date, thus, the question of probative value of testimony of witnesses, and its effect on bail out to be spared currently.

(q) That the trial court below has failed to appreciate that offence committed by the accused/respondent is against whole society as its impact is on general public in general and youth in particular as the trial court was supposed to decide the bail application keeping in view the parameters as laid down by the Hon'ble Apex Court for deciding a bail application.

(r) That the trial court while passing the impugned order has lost sight of this aspect that courts are guardians of public rights and interests of whole society and general public. The act of the accused/respondent is running harshly against the whole society. The trial court below being the guardian of public interests was supposed to maintain a balance between in individual interests and interests of society, the exercise of discretion in favour of accused/respondent is never justified in such matter, hence on this count also the impugned order deserves setting aside.

(s) That the trial court while passing the impugned order has observed that personnel liberty of an individual cannot be curtailed unless and until there is any justification for the same, however, the Hon'ble court has completely failed to take note of the justification available that accused/respondents were found in possession of commercial quantity of contraband from their possession, as such enlarging them on bail on this ground was never justified. The impugned order has been passed without any reason and logic as such deserves setting aside.

(t) That this Hon'ble Court has held that the menace of drugs has caused serious threat to society and has ruined the future of young persons. The persons involved in such activity cannot claim bail as a matter of right. Such accused has to be dealt with iron hand."

The respondents are facing trial in FIR 10/2023, which was registered with the police of Police Station, Bandipora for offences punishable under Section 8/22 r/w 29 NDPS Act. According to the prosecution they were

involved in illegal trade and business, offence covered under provisions of Narcotic Drugs and Psychotropic Substance Act.

The allegation was that they were found in possession of Narcotic Psychotropic Substance material in the nature of Codeine Phosphate 40 bottles which were recovered from their possession. They were taken into custody on the same day i.e. 20.01.2023.

The prosecution after completing the investigation laid the charge sheet before the Trial court and after framing of the charge, prosecution produced evidence which was recorded. During the pendency of the case, bail application came to be filed by the respondents seeking bail on the ground that they are innocent and have wrongly and falsely implicated and taken into custody.

Prior to bail application in which order impugned was passed they also filed bail which was rejected. The application which has been allowed was filed when 10 of the 12 witnesses were recorded and now it is being stated at this stage by Mr. Jahingeer A Dar, GA that 11 witnesses have already been recorded and which according to the applicant had not supported the prosecution version. Trial court after taking into consideration the evidence so recorded, allowed the application after making detailed discussion and taking into consideration the material on record and admitted the accused to bail. The Trial court had also taken into account the evidence so produced by the prosecution to support and prove the allegation in bid to provide their allegation against the accused.

So far as the applicability of Section 37 of NDPS Act was concerned, Trial court in para 13 has discussed its applicability and while taking into account the long pendency and delay in the trial observed that when there is delay in trial of the case, then in such a situation court can consider bail of accused person as same has been embedded under Article 21 of the Constitution.

The Trial court also taken into consideration the evidence has made an observation that there is no incriminating link with the alleged recovery of contraband from the accused persons and substance produced before the learned Magistrate for grant sample as well as sample forwarded to the FSL

for expert opinion and mandatory provisions required to be complied with has been totally bypassed during the course of investigation and the Trial court therefore, while taking note of provisions has observed that there had not been strict compliance of mandatory provisions of the Act while taking the samples.

The Trial in para 13 makes the following observations:

“...Therefore, Section 37 of this Act prescribing the conditions which have to be satisfied before a person/accused can be released on bail. The law is settled on this point that where there is a delay of trial of case then in such circumstances the court can consider the bail of the accused person as the same has been embedded under Article 21 of the Constitution. The conditions which have been contained under the rigor of Section envisaged that there is reasonable ground of believing that the accused is not guilty of such offence. Now the whole evidence is before the court and the same has been demonstrated summarisely and stated above. It clearly reflects that there is no incriminating link with the alleged recovery of contraband from the accused person and the substance produced before the learned Magistrate for drawing sample as well as the sample forwarded to the FSL for its expert opinion.

As the mandated provisions of law contemplated under NDPS Act has been totally bypassed during the course of investigation. Therefore, when the trial of the case is almost at the last leg and the contraband on the strength of which both these accused persons booked under the category of commercial quantity has neither been properly protected nor the sample was lifted.

It can be said that as per the whole evidence on record of the file there exists reasonable ground of believing that the accused persons are not guilty simply because of this reason what was recovered from the accused and inter on what was forwarded as a sample to the FSL laboratory for expert opinion is totally under an "illusion" irrespective of this fact that the statement of almost all the witnesses cited in the list have been completed and only the statement of (PW-7) FSL expert is left over.”

I have gone through the order whereby the bail has been granted to the respondents. The provisions contained in NDPS Act provided for stringent punishment, therefore, as it provides stringent punishment, the provisions contained in the said Act are to be strictly followed and complied with. Strict compliance is thus required in such cases. The Trial court while passing the order granting the bail has taken note of the violation of the provisions of Act and has rightly passed the order impugned and admitted the accused to bail.

There is thus not illegality in passing the impugned order. This petition is hopelessly without any merit and is accordingly, **dismissed**.

(VINOD CHATTERJI KOUL)
JUDGE

Srinagar
26.11.2025.
“Imtiyaz”

