

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

Reserved on: 01.12.2025

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

Bail App No.173/2025

c/w

Bail App No.211/2025

GAIRAT ALI BAJAD
KHAYAL SHAFI BADHANA

...PETITIONERS/APPELLANT(S)

Through: - Mr. Shuja ul Haq. Advocate (in Bail App No.211/2025).
Mr. Imam Abdul Moiz, Advocate (in Bail App No.173/2025)

Vs.

UT OF J&K ...RESPONDENT(S)

Through: - Mr. Zahid Qais Noor, GA, vice
Mr. Mohsin Qadiri, Sr. AAG.

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

JUDGMENT

1) By this common judgment, the afore-titled two bail applications, one filed by petitioner Gairat Ali Bajard and the other filed by petitioner Khayal Shafi Badhana, are proposed to be disposed of. Both the petitioners have invoked jurisdiction of this Court under Section 483 of BNSS for grant of bail in a case arising out of FIR No.17/2023 for offences under Sections 8/21, 27A and 29 of NDPS Act read with Section 201 of IPC registered with Police Station, Rajbagh, Srinagar.

2) As per case of the prosecution, on 06.04.2023, Police of Police Station, Rajbagh, received an information through reliable sources that at Kursoo Bund Rajbagh, accused Sajad Ahmad Badhana and Zaheer Ahmad Tunch, who are living in a rented accommodation at Kursoo Rajbagh, are dealing with contraband narcotic substances and that these two accused have procured the contraband narcotic substances illegally and transported the same from Karnah to Rajbagh Srinagar for sale. It was further reported that these two accused persons have sold some quantity of the contraband narcotic substances procured by them and they are in the process of transporting the remaining quantity of contraband narcotic substances from Rajbagh to other places for sale. On the basis of this information, FIR No.17/2023 for offences under Section 8/21 of NDPS Act was registered and investigation of the case was set into motion.

3) During investigation of the case, a raid team was constituted in which SDPO, Sadder and Executive Magistrate South, Srinagar, were also associated. Upon conducting search of the room of accused Sajad Ahmad Badhana, said accused and accused Zaheer Ahmad Tunch were found present over there. During search of the room, a

grey coloured bag, in which another black colour bag filled

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with 11 polythene packets containing Heroine like substance, which were hidden under a bed, were recovered. During further search, another bag containing Indian currency notes of 200, 500 and 2000 denomination were found hidden under the same bed. The seized contraband was weighed and it was found weighing 11 kgs. The total seized cash was found to be Rs.11,82,500/. 11 samples from each of the 11 packets (5 gram each) were drawn and the same were sealed. The remaining contents of the recovered packets of the Heroine like substance were also sealed.

4) Upon questioning of accused Sajad Ahmad Badhana and Zaheer Ahmad Tunch, it was revealed that they had procured the contraband substance from a person, namely, Nazir Bhai from Pakistan, whereafter this Narcotic contraband substance was transported through Karnah to Srinagar in a Scorpio vehicle bearing No.JK01Q-4141 by concealing the same in a spare wheel compartment. During further course of investigation, accused Sajad Ahmad Badhana made a disclosure before the Executive Magistrate that he, in conspiracy with accused Zaheer Ahmad Tunch, accused Bashir Ahmad Tunch, accused Ab. Rashid Kohli and accused Khayal Shafi Badhana (petitioner herein) had procured heroine from Nazir Ahmad and transported it to

Srinagar from Karnah in Scorpio vehicle bearing JK01Q-

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4141 where he sold this heroine to accused Gairat Ali Bajard (petitioner herein) and accused Shabir Ahmad Wani using Tata Tiago vehicle bearing No.JK09B-3619 in lieu of cash of more than Rs.8.00 lacs, out of which some amount was deposited by accused Sajad Ahmad Badhana in his bank account. He further disclosed that accused Gairat Ali Bajard has transferred Rs.15,000/ in his bank account using net banking.

5) Accused Zaheer Ahmad Tunch also made a similar disclosure statement, whereafter accused Bashir Ahmad Tunch, Ab. Rashid Kohli, Gairat Ali Bajard and Shabir Ahmad Wani were arrested. Accused Khayal Shafi had absconded but he was also arrested later on.

6) Accused Gairat Ali Bajard (petitioner herein) is stated to have made a disclosure statement that he, in conspiracy with accused Shabir Ahmad Wani, procured heroine from accused Sajad Ahmad Badhana and Zaheer Ahmade Tunch at Kursoo Rajbagh against a cash amount of Rs.8.00 lacs, which amount was provided in cash by accused Shabir Ahmad Wani and he also transferred a sum of Rs.15000/ to the bank account of accused Sajad Ahmad Badhana from his personal account via net. He also disclosed that a sum of Rs.5000/ was transferred to him by accused Shabir Ahmad

Wani via net banking on 05.04.2023.

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7) During investigation of the case, it was also found that the vehicle used in transportation of the contraband substance i.e. vehicle bearing No.JK01Q-4141 is registered in the name of prosecution witness, namely, Raja Altaf Khan, who had sold the said vehicle to accused Khayal Shafi in the year 2021 whereas vehicle TATA Tiago bearing No.JK09B – 3619 is registered in the name of Mohammad Shafi, the father of accused Khayal Shafi (petitioner herein), who has already expired.

8) The Investigating Agency has also analysed the money trail by procuring information from the relevant banks. It was found that Rs.15,000/ were transferred to the account of accused Sajad Ahmad Badhana from the account of petitioner Gairat Ali Bajard on 05.04.2023 and on the same day, an amount of Rs.5000/ was transferred from the account of accused Shabir Ahmad Wani to the account of petitioner Gairat Ali Bajard which was then transferred by him to accused Sajad Ahmad Badhana. It was further found that an amount of Rs.3,32,000/ was deposited in cash by accused Sajad Ahmad Badhana in his account and a sum of Rs.2,57,000/ was deposited by the said accused in the account of petitioner Khayal Shafi within 23 days from 13.03.2023 to 05.04.2013 using cash deposit machine. A

sum of Rs.2,79,300/ was transferred by accused Sajad

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Ahmad Badhana into the account of his wife and thereafter a further sum of Rs.1,04,400/ was transferred by the said accused to the account of petitioner Khayal Shafi from the account of wife of accused Sajad Ahmad Badhana. Thus, according to the prosecution, unaccounted cash deposited within a span of 23 days in the entire accounts operation history clearly establishes that these deposits and transfers were made out of proceeds of narcotic sale and were part of unaccounted cash amounting to Rs.11,82,500/, which was seized on spot on 06.04.2023. The Investigating Agency has found that all the accused including the petitioners herein are involved in financing of narcotic trade, hence offence under Section 27A of NDPS Act was also invoked.

2) The Investigating Agency also obtained Call Data Records of cell phones of all the accused persons and after analysing the same, it was found that they were connected with accused Nazir Ahmad Tunch who is located in Pakistan and they were communicating with him via WhatsApp. It was also found that all the accused including the petitioners were in contact and in touch with each other via WhatsApp and had exchanged calls on the days of sale/purchase of contraband substance. The CDR/tower locations of the accused further reveal that accused Sajad Ahmad Badhana

11.03.2023 and met petitioner Khayal Shafi and accused Zaheer Ahmad Tunch, whose locations on the same day i.e. 11.03.2023, were reflected as Rajbagh in corresponding CDRs. It was also established that that on 13.03.2023, accused Sajad Ahmad Badhana and accused Khayal Shafi travelled together towards Karnah from Rajbagh and reached Karnah at the same time while accused Bashir Ahmad and accused Ab. Rashid were already present in the same area. As per the locations traced in CDRs, accused Sajad Ahmad Badhana returned back to Rajbagh, Srinagar, on 17.03.2023 whereas accused Zaheer Ahmad Tunch, stayed back at Rajbagh Srinagar. The CDR analysis further revealed that petitioners Gairat Ali Bajard and Khayal Shafi were in frequent contact with each other and accused Sajad Ahmad Badhana came in contact with petitioner Gairat Ali Bajard on 21.03.2023 and simultaneous calls were made between petitioner Gairat Ali Bajard, accused Sajad Ahmad Badhana and petitioner Khayal Shafi until 06.04.2023.

10) From the analysis of CDRs of the cell phones of the petitioners, it was found that they were in contact with each other, simultaneous calls were made between petitioners and accused Sajad Ahmad Badhana and they were also in touch with accused Nazir Ahmad Tunch who is located in

Pakistan during the period when the consignment of heroine

was recovered from the premises of accused Sajad Ahmad Badhana and Zaheer Ahmad Tunch. Thus, offences under Section 8/21, 27A and 29 of NDPS Act were found established against all the accused including the petitioners herein and the charge sheet was laid before the trial court.

11) It appears that vide order dated 12.10.2023, charges for offences under Section 8/21, 27A and 29 of the NDPS Act read with Section 201 of IPC were framed against the accused including the petitioners herein and the trial of the case was set into motion. It also appears that vide order dated 05.08.2025, the learned trial court dismissed bail applications of all the accused including the petitioners herein.

12) The petitioners have sought bail in their favour on the grounds that they have been implicated in the case on the basis of the disclosure statements made by co-accused and the disclosure statements made by the petitioners in presence of police officials and the Executive Magistrate, which are inadmissible in evidence. It has been contended that merely on the basis of Call Data Records without any transcription, the petitioners could not have been implicated in the instant case and even the financial transaction between one of the petitioners with the main accused does

not go on to show his involvement in the alleged crime. The petitioners in support of their case have relied upon the following judgments:

1. **Dipakbhai Jagdishchandra Patel v. State of Gujarat**, (2019) 16 SCC 547;
2. **Tofan Singh v. State of Tamil Nadu**, (2021) 4 SCC 1;
3. **Rayees Ahmad Dar v. UT of J&K** (BA No.05/2022)
4. **Dinesh Kumar @ Billa v. State of H.P.**, 2020 HHC 3315;
5. **Saina Devi v. State of Himachal Pradesh**, 2022 Legal Eagle (HP) 164;
6. **Amal E v. State of Kerala**, 2023 Ker 39393;
7. **Rhea Chakraborty v. Union of India**, 2021 CrI. LJ 248

13) The respondent Investigating Agency has contested the bail applications by filing its reply to the same. In its reply, the respondent Investigation Agency, has, besides narrating the allegations made in the charge sheet, contended that there are reasonable grounds for believing that the petitioners have committed the alleged offences. It has been contended that the petitioners are involved in the offences which are against the society and if they are enlarged on bail, it will encourage those who are involved in drug trafficking. It has been further contended that in case the petitioners are admitted to bail, there is every likelihood that they will misuse the concession of bail and would jump over the bail.

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

15) 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.

16) The expression “reasonable grounds” has been discussed by the Supreme Court in the case of **Collector of Customs, New Delhi vs. Ahmadaliev 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.”

17) 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.”

18) 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.”

19) 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.

20) 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.

21) The main ground that has been urged by the petitioners for grant of bail is that no recovery of contraband substance has been effected from their possession and their involvement in the case is shown on the basis of the disclosure statements made by the co-accused. It has been submitted that these disclosure statements made by co-accused Sajad Ahmad Badhana and Zaheer Ahmad Tunch in presence of police officials and the Executive Magistrate are not admissible in evidence.

22) There is no quarrel with the proposition of law that the statement made by an accused in presence of police or in presence of an Executive Magistrate while in custody is not admissible in evidence but Section 27 of the Evidence Act carves out an exception to this general rule. It provides that that a portion of the statement made by an accused person in police custody, if that information leads to discovery of a new fact, can be proved, meaning thereby that the said portion of the statement made by an accused in the custody of police which leads to discovery of a fact is admissible in evidence

23) In the present case, accused Sajad Ahmad Badhana has disclosed that he has received a sum of Rs.15000/ in his account from petitioner Gairat Ali Bajard through net banking on 05.04.2023 as a part of sale proceeds of consignment of heroine, which he had sold for an amount of Rs.8.00 lacs. This statement of accused Sajad Ahmad Badhana, which led to the discovery of the fact relating to receipt of Rs.15,000/ by him through net banking from petitioner Gairat Ali Bajard, is admissible in evidence and when the respondent Investigating Agency proceeded to investigate the case on the basis of the said information, it was found that, in fact, an amount of Rs.15,000/ had been transferred by petitioner Gairat Ali Bajard to accused Sajad Ahmad Badhana, from whose possession a huge quantity of heroine weighing 11 kgs was recovered by the raiding party during investigation of the case. Thus, it cannot be stated that the disclosure statement of accused Sajad Ahmad Badhana to the extent it has implicated petitioner Gairat Ali Bajard is not admissible in evidence.

24) Besides above, the Investigating Agency has, during the course of investigation, seized the vehicles in which the contraband was transported from Karnah to Rajbagh Srinagar. The ownership of these vehicles is traced to petitioner Khayal Shafi. The vehicle bearing No.JK01Q-4141

is stated to have been purchased by the said petitioner in the year 2021 from its original owner whereas vehicle bearing No.JK09B-3619 is stated to be registered in the name of father of petitioner Khayal Shafi, who has already expired, meaning thereby that the vehicle has come to the ownership of the said petitioner. Not only this, the Investigating Agency has, after investigation of the case, meticulously traced the money trail, which shows that the main accused Sajad Ahmad Badhana had deposited an amount of Rs.5.79 lacs in cash in the account of petitioner Khayal Shafi which he maintained at Karnah. It is also shown that an amount of Rs.1,04,400/ was again transferred to the account of accused/petitioner Khayal Shafi from the account of wife of accused Sajad Ahmad Badhana. All these transactions have taken place within a span of 23 days around the period when the recovery of contraband substance has taken place from the premises of main accused Sajad Ahmad Badhana. Then there are Call Data Records and tower locations which may not be substantive evidence for implicating the petitioners in the alleged crime but, nonetheless, the said material does corroborate and lend support to the conclusion of the Investigating Agency that the petitioners were in league with other co-accused in connection with the offences for which they have been charged.

25) Apart from the above, the petitioners have already been charged for offences under Section 8/21, 27A and 29 of NDPS Act and the order framing charge has not been assailed by them. Therefore, at this stage it is to be presumed that the petitioners are guilty of the offence for which they have been charged. Thus, the main condition laid down in Section 37 of the NDPS Act for grant of bail to an accused who is involved in an offence relating to possession of commercial quantity of narcotic contraband substance or an offence under Section 27A of the NDPS Act, is not satisfied in the present case. Thus, the petitioners are not entitled to grant of bail at this stage.

26) For the foregoing reasons, I do not find any merit in these petitions. The same are dismissed accordingly.

(Sanjay Dhar)
Judge

SRINAGAR

11.12.2025

“Bhat Altaf-Szeg”

Whether the **Judgement** is speaking: **YES**

Whether the **Judgement** is reportable: **YES**