

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

Bail App No. 138/2024

Reserved On: 27th of March, 2025.
Pronounced On: 6th of June, 2025.

Sajad Ahmad Sheikh

... Petitioner(s)

Through: -
Mr S. S. Rizvi, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -
None.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge

(JUDGMENT)

01. Heard.

02. Perused the Bail Petition, the Objections along with the respective documents accompanying therewith.

03. The jurisdiction of this Court under section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 [corresponding to section 439 of the Code of Criminal Procedure (Cr. P. C.), 1973 read with Section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 has been solicited by

the petitioner, acting through his brother, thereby seeking bail on the ground of state of his ailing health while serving custody as an under-trial in a criminal case pending before the Court of learned Special Judge (NDPS Cases), Srinagar.

04. Police Station Chanapora, Srinagar came to register an FIR No. 31/2024 on account of an alleged incident of 26th of August, 2024 when during the course of Naka Checking set up at Hamambal, Budshah Nagar, three persons alleged to be coming from Mehjoor Nagar, Natipora towards Budshah Nagar came to be intercepted and found to be carrying a bag in their possession. Upon their apprehension, the said persons came to be identified as (1) Aniket Kumar S/o Ashok Kumar R/o 233, Tilpata, Karanwas, Dardi, Gautum Buddha Nagar, UP, (2) Shavan Kumar @ Aditya S/o Pappal R/o 238 Tilpata, Karanwas, Dardi, Gautum Buddha Nagar, UP and (3) the Petitioner herein.

05. During their alleged search, 36 numbers of alleged contraband in the form of Codril-T (Codeine Phosphate) bottles were recovered from the personal possession of Aniket Kumar, one of the three accused persons so apprehended.

06. This incident resulted in their booking under section 8/22 read with section 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

07. During the course of investigation of the case, the petitioner came to prefer a bail petition before the Court of Special Judge (NDPS cases), Srinagar on 28th of September, 2024 on file No. 347/2024 thereby seeking grant of bail in his favour on the basis of his purported medical condition at that time reported to be afflicting and affecting him.

08. During the pendency of the said bail application, final Police Report (Challan) u/s 193 BNSS, 2023 is said to have been presented on 28th of October, 2024 against all the three accused persons.

09. In connection with the adjudication of the bail petition so filed before the Special Judge (NDPS Cases), Srinagar, a medical report related to the health condition of the petitioner was sought from the Superintendent, Central Jail, Srinagar.

10. Thereafter, the Senior Medical Officer, Central Jail, Srinagar came forward with requisite medical report dated 2nd of November, 2024 which confirmed the fact that the petitioner

suffers from T2DM (type 2 Diabetes Mellitus) on Insulin, Hypertension and Headache. However, the complaint of chest pain reported by the petitioner was examined to be normal with advice for cardiology follow up in OPD.

11. On the basis of said medical report, the Court of Special Judge (NDPS Cases), Srinagar found no good reason for granting bail on medical ground in favour of the petitioner related to his then stated medical condition which was being attended to by the Jail Authorities as per medical protocol without any deficiency in service in terms of medical treatment. Accordingly, said bail application was rejected vide an order dated 13th of November, 2024, whereupon the petitioner came forward with the institution of the present Bail Petition before this Court on 19th of November, 2024.

12. This Court invited a fresh medical status report related to the petitioner which came to be submitted by the Station House Officer (SHO), Police Station, Chanapora, Srinagar on 13th of January, 2025 accompanied with Senior Medical Officer, Central Jail, Srinagar's communication No. SMOCJ/24/1140 dated 17th of December, 2024 addressed to the Senior Superintendent, Central

Jail, Srinagar related to the medical condition of the petitioner.

Part of the said report needs to be reproduced herein:

“On 25-11-2024, the above said inmate was referred to Govt. super Specialty Hospital Sheerbagh, Srinagar for cardiology follow up as advised. The consultant cardiologist after examination advised medication and CT Coronary Angiography dated 29/11/2024, the medication advised is provided to him regularly in view of raised creatine consultant cardiologist advised nephrology consultation. He was referred for nephrology consultation of Govt. super Specialty Hospital at Sheerbagh, Srinagar, the consultant nephrologist after examination advised medication and advised to wait for contrast study, then they redated him on 04-12-2024 but due to non-availability of escort the said procedure was not conducted, fresh date for the said procedure may be fixed as soon as possible.”

13. When this Court examines the health report of the petitioner, this Court cannot escape noticing the fact that the petitioner is suffering a complication related to his kidney functioning which of course is compounded by him being afflicted with diabetic status and on that count the petitioner has a cause for concern related to his medical well being and health.

14. The rigor in section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 in the matter of grant of bail takes a back-seat when there is ground of health reason

related to an accused under custody booked under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 seeking bail. In that scenario, it is section 439 of the Code of Criminal Procedure (Cr.P.C.) [corresponding to section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023] which provides for exercise of discretion by a given court either to grant or refuse bail in favour of an ailing/sick accused person in custody.

15. In the context of the present case when the petitioner is now in custody for the last more than 10 months in running and simultaneously bearing in mind that intervening health condition of the petitioner has resulted in his examination by Nephrologist Consultant confirming the fact of raised creatinine level of the petitioner, this Court is inclined to grant indulgence in granting a duration bail in favour of the petitioner. Hence, a case is made out for enabling the petitioner to get himself medically examined and attended at his as well as his family's expenses and efforts in any of the best medical establishment of the Union Territory of Jammu & Kashmir corresponding to his affordability to check any further aggravation of his kidney related malfunctioning which in the state of being in confinement and custody is likely to suffer a

neglect in one form or the other notwithstanding an assurance from the Jail Authorities that the petitioner would be duly attended to receive due medical attention.

16. Therefore, in the light of the aforesaid facts and circumstances of the case, this Court grants a duration bail of four months in favour of the petitioner from the date of his release from the Central Jail, Srinagar subject to the terms and conditions as may be deemed appropriate to be imposed by the Court of Special Judge (NDPS Cases), Srinagar. This Court is granting duration bail in favour of the petitioner for a period of four months by reserving discretion in favour of the trial court to consider extension of the bail in favour of the petitioner only upon fresh evaluation of the medical condition of the petitioner, as may come to be reported by the petitioner on the basis of his medical record of the period of four months for which he is being enlarged on bail on the basis of indulgence by this Court. The trial court not to be influenced by any observations made by this Court in this order in the matter of considering extension or refusal of extension of bail in favour of the petitioner.

17. **Disposed of.**

18. Copy of this order to be forwarded by Registrar Judicial, Srinagar to the Court of Special Judge (NDPS Cases), Srinagar for setting terms and conditions of bail for period of four months.

(Rahul Bharti)
Judge

SRINAGAR

6th of June, 2025

"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.

