

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(Virtual Mode)
Bail App No. 18/2026
CrIM No. 709/2026
CrIM No. 199/2026

Reserved on: 07.08.2026
Pronounced on: 11.08.2026
Uploaded on: 11.08.2026
Whether the operative part or Full Judgment
is Pronounced: Full.

Yasir Ali

.... Petitioner(s)

Through: Mr Jameel Ahmad, Advocate

v.

Union Territory of JK through Superintendent District Jail Amphala, Jammu and anr.

... Respondent(s)

Through: Mr Pawan Dev Singh, Dy.AG

CORAM:

Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

ORDER

01. By this application filed in terms of Section 483 BNSS, 2023, the petitioner is seeking regular bail in FIR No. 26 of 2023 registered at Police Station City Jammu, for offences under Sections 8/21/22/27 & 27-A of the NDPS Act, 1985, and section 304, 328, 34 & 201 of IPC, arising out of the death of one Umran Khan allegedly on account of consumption of a contraband substance adulterated with rodenticide.
02. As per the prosecution case, one Umran Khan died after co-accused Waseem Akram injected him with a substance procured from the present petitioner alleged to be a controlled substance under the NDPS Act mixed with rodenticide (rat poison), which is stated to be the proximate cause of death of the deceased.

03. During investigation, the petitioner is stated to have made a disclosure statement to the effect that he is a drug addict and had, on two occasions, sold a substance to co-accused, it is on the strength of this disclosure statement that the prosecution has characterised him as a peddler.
04. It is not in dispute that co-accused Waseem Akram, who is alleged to have actually administered/injected the contraband to the deceased, has already been enlarged on bail vide order dated 24.10.2025, passed by learned Special Judge, NDPS, Jammu. The petitioner's application for bail before the learned Special Judge, NDPS Cases, Jammu, however, came to be dismissed in terms of the same order, essentially on the short ground that since the petitioner is also chargesheeted under Section 27-A of the NDPS Act, the embargo/rigours contemplated therein disentitle him to bail.

Submissions on behalf of the Petitioner

05. Learned counsel for the petitioner submits that the petitioner is entitled to bail on parity, inasmuch as co-accused whose role is stated to be more direct and proximate to the death, having actually administered the injection, has already been granted the concession of bail; the ingredients of Section 27-A NDPS Act are not attracted in the case in hand, which requires proof of illicit traffic or harbouring, a person engaged in illicit traffic, in the sense explained by the Hon'ble Supreme Court in *State of Kerala v. Rajesh, (2020) 12 SCC 122*; the petitioner has no role in the act of injecting/administering the substance to the deceased, and at best a case under Sections 21/22 NDPS Act, is made out against him, for which he is entitled to be considered for bail on merits; the material relied upon by the prosecution to brand the petitioner a peddler, is, in substance, only a disclosure/confessional statement recorded during investigation; such a statement, being in the nature of a confession made to an investigating

officer, is inadmissible under Section 25 of the Indian Evidence Act, and cannot, by itself, at this stage, be read as substantive proof of the ingredients of Section 27-A NDPS Act.

06. Learned counsel for the petitioner, also submits that even otherwise, the case set up by the prosecution refers to only two isolated instances of alleged sale of contraband by the petitioner; no material such as bank transactions, recovery of cash proceeds, call detail records, or other corroborative evidence has been placed on record to show receipt of any financial benefit or the existence of an ongoing trade, business or organized activity of trafficking on the part of the petitioner, which is the gravamen of the expression; financing illicit traffic under Section 27-A NDPS Act; In the absence of such material, the ingredients of Section 27-A are not, *prima facie*, made out against the petitioner merely on the strength of a disclosure statement, the rigours of Section 37 NDPS Act, insofar as they flow from Section 27-A, would not stand attracted to the extent held by the learned trial Court;

07. Learned counsel for the petitioner further submits that since the petitioner is not shown to have financed the illicit traffic in the sense of funding or bankrolling co-accused's activities, the only other limb of Section 27-A is harbouring; a person engaged in illicit traffic; however, no material whatsoever has been placed on record to show that the petitioner sheltered, concealed or afforded protection to co-accused or kept him hidden from apprehension, an essential ingredient of harbouring, and the two isolated incidents of sale cannot, without such material, be equated with harbouring; The petitioner is in custody since two and a half years, the challan/final report already stands presented, and trial is likely to take considerable time;

or tamper with evidence, and is willing to abide by any conditions this Court may deem fit to impose.

Submissions on behalf of the Respondent/UT

08. Mr Pawan Dev Singh, learned DyAG, appearing for the respondents, opposes the bail application and submits that the petitioner stands on a wholly different footing from co-accused; whereas co-accused is a mere consumer of the contraband, the petitioner is the source, supplier and, on his own admission, a peddler engaged in the business of selling contraband substances, squarely attracting the ingredients of financing illicit traffic under Section 27-A NDPS Act; He submits that it is the substance supplied by the petitioner which, upon being mixed with rodenticide, caused the death of the deceased; the petitioner therefore bears a distinct and graver responsibility in the chain of events than the co-accused who merely administered what was supplied to him; Learned Dy.AG submits that rigours of Section 37 NDPS Act stand squarely attracted, and at this stage there are reasonable grounds for believing that the petitioner is guilty of the offence, particularly having regard to his own admission of being a drug peddler; Learned Dy.AG further submits that parity cannot be claimed by an accused whose role and culpability are materially different from that of a co-accused who has been granted bail, and each bail application has to be examined on its own facts.

ANALYSIS:

09. Section 37 of the NDPS Act, 1985 imposes a statutory embargo on the grant of bail in respect of offences under, *inter alia*, Section 27-A, and mandates that no such person shall be released on bail unless (i) the Public Prosecutor has been given an opportunity to oppose the application, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there

are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. This twin-condition test has been consistently reiterated by the Supreme Court, including in *Union of India v. Ram Samujh*, (1999) 9 SCC 429; *Union of India v. Rattan Mallik*, (2009) 2 SCC 624; and *State of Kerala v. Rajesh*, (2020) 12 SCC 122. It would be profitable to reproduce paragraph nos. 19 & 20 of the *State of Kerala v Rajesh supra*, herein, thus:

“19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. 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.”

10. Section 27-A of the NDPS Act penalises, *inter alia*, financing, directly or indirectly, any of the activities specified in Sections 15 to 25-A, or harbouring any person engaged in any such activity. Whether a given accused falls within the sweep of these expressions depends on the quality and sufficiency of the material placed on record, and not merely on the label of the offence mentioned in the chargesheet.
11. The expression financing, as appearing in Section 27-A NDPS Act, connotes the provision of funds, capital or financial support, knowingly, for carrying

on illicit traffic; it is an ingredient distinct from, and going beyond, a solitary or occasional act of sale. Similarly, harbouring contemplates concealment or affording shelter/protection to a person engaged in illicit traffic with knowledge of his involvement therein. Both ingredients require something more than the bare fact of one or two isolated transactions of sale, they require material demonstrating an element of financial gain, an ongoing course of dealing, or knowing concealment/protection of another trafficking activity.

12. It requires to be emphasized here that Section 27-A NDPS Act is not attracted by proof of sale or supply simpliciter, such conduct falls within Sections 21/22 of the Act. To bring a case within the scope of Section 27-A, the prosecution must establish either that the accused financed illicit traffic, or that he harboured a person engaged in such traffic. On the facts alleged, there is no suggestion that the petitioner funded or bankrolled co-accused's activities in the sense required for the case. That expression, however, imports something distinctly more than a transaction of sale, it requires the accused to be shown to have sheltered, concealed, or afforded protection to co-accused, with knowledge of his involvement in illicit traffic, so as to shield him from detection or apprehension. No such material, indicating concealment, provision of shelter, or knowing protection of co-accused from the law has been placed on record. A person cannot be held to be harbouring another merely because he sold a substance to him.

13. In the present case, the material presently forming part of the record to attribute the role of financier to the petitioner is confined to (i) his own disclosure statement recorded during investigation, and (ii) reference to two instances of alleged sale, without any accompanying material such as

benefit or an organized trafficking activity, and without any material at all going to the distinct ingredient of harbouring. A disclosure statement made to an investigating officer, being in the nature of a confession, is inadmissible in law in view of Section 25 of the Indian Evidence Act and the law laid down in *Toofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, and cannot, therefore, be treated as sufficient material at this stage to hold that the ingredients of Section 27-A NDPS Act are *prima facie* established.

14. This Court is, therefore, of the *prima facie* view that the material presently on record, *de hors* the disclosure statement, in absence of any evidence either of financial benefit derived by the petitioner or of his having harboured co-accused, does not conclusively bring the case within the higher threshold contemplated under Section 27-A NDPS Act, as distinct from the ordinary offences under Sections 21/22 of the Act. The learned trial Court appears to have proceeded on the short ground that the petitioner is also chargesheeted under Section 27-A, without examining whether either limb of that provision, financing or harbouring, is, in fact, *prima facie* borne out by the material collected during investigation. That approach is not sustainable in law, as the embargo under Section 37 NDPS Act is attracted by the true nature of the accusation and the material in support thereof, and not by the label of the offence alone.

15. It is no doubt correct that parity is not a thumb rule, however, where, as here, the material said to distinguish the petitioner's case from that of the already-enlarged co-accused is itself of a fragile and largely inadmissible character, the unequal treatment meted out to the petitioner by the learned trial Court cannot be sustained. Co-accused, who is alleged to have actually administered the contaminated substance resulting in death, has been

presently available, is not shown, *prima facie*, to travel beyond that of an occasional supplier, cannot be kept in continued incarceration on a more stringent footing.

16. Apart from above, it is also brought to the notice of this Court that out of a total of 30 witnesses cited by the prosecution, only 9 have been examined so far in a period of two and a half years since commencement of trial. Conclusion of trial, at this pace, is likely to take further considerable time. Prolonged pre-trial incarceration, disproportionate to the stage of trial, itself constitutes a relevant ground for grant of bail, notwithstanding the rigours of Section 37 NDPS Act, since the constitutional guarantee of a speedy trial under Article 21 of the Constitution cannot be subservient to the statutory embargo on bail where the trial is not being conducted with reasonable expedition. This position stands fortified by the law laid down in ***Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109***, and ***Union of India v. Md. Nawaz Khan, (2021) 10 SCC 100***, wherein it has been held that undue and prolonged delay in conclusion of trial can, by itself, be a ground for grant of bail even in offences to which Section 37 NDPS Act applies. The slow pace of trial, coupled with the *prima facie* infirmities noticed above in the material relied upon to invoke Section 27-A, reinforces the case for release of the petitioner on bail.
17. Furthermore, it is borne out from the prosecution story itself that contraband amounting to 2.5 grams have been recovered from the residence of the petitioner which again does not fall within the category of commercial quantity, making the rigour of 37 NDPS Act again inapplicable to the facts of the instant case and uphold the chances of the bail in favour of the petitioner.

18. It is, however, made clear that the question whether the ingredients of Section 27-A NDPS Act, whether by way of financing or harbouring, are ultimately established against the petitioner, including the evidentiary value and admissibility of the disclosure statement and the true nature and scale of his dealings, shall be examined by the learned trial Court on its own merits, uninfluenced by the *prima facie* observations made herein for the limited purpose of deciding the present bail application.

CONCLUSION:

19. For the foregoing reasons, the present bail application is allowed and the petitioner, namely Yasir Ali, S/o Abdul Latief R/o Palpad Raghoora A/p Kulla Nikki Tawi, Bhagwati Nagar, Jammu, is directed to be released on bail in connection with FIR No. 26 of 2023, of Police Station City Jammu, subject to his furnishing a personal bond in the sum of Rs. 100,000/- to the satisfaction of the Superintendent of Jail concerned with two sureties of the like amount to the satisfaction of the learned Registrar Judicial of this Court, and subject to the following conditions:

(i) That the petitioner shall not leave the territorial jurisdiction of District Jammu without prior permission of the learned trial Court;

(ii) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the police, and shall not tamper with the prosecution evidence in any manner;

(iii) That the petitioner shall appear before the trial court on each and every date of hearing, unless exempted;

(iv) That the petitioner shall surrender his passport, if any, before the learned trial Court and shall not indulge in any similar activity during the pendency of trial;

(v) That any violation of the aforesaid conditions shall entitle the prosecution/respondent to seek cancellation of bail.

20. It is clarified that the observations made hereinabove are confined to the disposal of the present bail application and shall not be construed as an expression of opinion on the merits of the case; the trial Court shall proceed with and conclude the trial uninfluenced by any observation made in this order.

21. Disposed of accordingly.

(Moksha Khajuria Kazmi)
Judge

Srinagar
11.08.2026
Amjad lone, Joint Registrar/Secy

Whether the order is reportable: Yes/No
Whether the order is speaking: Yes/No

