

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

[Through Virtual Mode]

Bail App No. 33/2026

Dated: 12th of August, 2026.

Tanzeer Ahmad Najar
S/O Mohammad Sayeed Najar
R/O Sudipora, Karnah, Tanghdar
District Kupwara
Through his wife Iqra Bano

... Petitioner(s)

Through: -
Mr Arshad Andrabi, Advocate.

V/s

Union Territory of J&K,
Through Police Station Chenani, Udhampur.

... Respondent(s)

Through: -
Mr Sumeer Bhatia, Government Advocate.

CORAM: HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(JUDGMENT)

01. The Petitioner is seeking bail in connection with the offences under Sections 8/21/22/29 of the Narcotic Drugs and Psychotropic Substances Act [NDPS Act] and 238 of the Bharatiya Nyaya Sanhita, 2023 [BNS].

02. The Petitioner had earlier moved a similar application before the Court of learned Additional Sessions Judge, Udhampur (exercising special powers under the NDPS Act) [Trial Court], which came to be rejected by Order dated 27 September, 2025.

03. The Petitioner seeks his enlargement on bail on the ground that he is shouldering the responsibility of minor children and that, as he has

been in jail for last 1 and ½ years, there is no one to support his family at home. It is further contended that the learned Trial Court decided the bail application in absence of his lawyer, therefore, his right to be heard is violated.

04. The principal ground urged is that, except for the confessional/disclosure statement of the co-accused recorded during investigation before the Police Officers, there is no material connecting the Petitioner with the commission of the alleged offences.

05. It is also vehemently canvassed at the Bar that neither any recovery of alleged contraband has been made from the possession of the Petitioner nor is there any admissible evidence available against him. Therefore, mere allegation that the bank account of his wife is used for proceeds of narcotics is not sufficient to keep him behind the bars.

06. On the strength of the above, it is prayed that the Petitioner is entitled to the concession of bail, having regard to the alleged sole reliance on inadmissible material, long period of incarceration and the delay in the progress of the trial.

07. The Respondent-UT has filed detailed Objections to the Petition.

08. The warp and weft of the Objections is that the Petitioner is part of a larger conspiracy involved in supplying and trafficking of narcotic drugs into the society for monetary gains.

09. The Bail Application is specifically opposed on the ground that the Petitioner is the kingpin who has been supplying the narcotics and, in the case on hand, the seized contraband was also supplied by him to the co-accused. It is specifically contended that the Petitioner has not been arraigned solely on the basis of confessional statement of the co-accused,

but the material collected in pursuance of the information so received proves the complicity of the Petitioner in the commission of the alleged offences.

10. Besides making factual and legal submissions while opposing the application, the Respondent has also given the details of the Prosecution story. Therefore, for sake of brevity and in order to avoid repetition, the relevant facts and material shall be adverted to at the appropriate stage.

11. Heard learned Counsel for the parties and perused the Trial Court record.

12. The Prosecution story, in brief, is that on the basis of a specific information regarding transportation of narcotics, a *naka* was laid and, during *naka* checking, a Maruti Car bearing registration No. JK13B-1343 was intercepted after adhering to the mandatory provisions of NDPS Act, search of the occupant, namely, Mohammad Ashraf S/O Abdul Rashid R/O Kilam, Tankipora, Gund, Kulgam was conducted. A packet containing narcotics concealed beneath the seat was recovered, containing 695 grams of *heroin*. Accordingly, the contraband was seized, sealed on spot and the necessary codal formalities were completed. This investigation is carried out in FIR No. 163/2024 of Police Station Chenani dated 21st of October, 2024. During investigation, name of co-accused-Mohd. Ishaq Shah @ *Gulabo* surfaced as a supplier of the prohibited narcotics. Later, sufficient material was collected in the shape of Call Detail Records (CDRs) and other material showing the complicity of the accused-Mohd. Ishaq Shah @ *Gulabo* as the supplier of the seized narcotic to the principal accused, namely, Mohammad Ashraf.

13. During the custodial investigation of co-accused-Mohd. Ishaq Shah @ *Gulabo*, a disclosure statement was made under Section 67 of the NDPS Act, whereby the name of the Petitioner surfaced as the kingpin who

used to supply the narcotics to the accused-Mohd. Ishaq Shah and, through him, the same reached the possession of the principal accused-Mohammad Ashraf, from whose possession the alleged narcotic drug was seized at the time of the occurrence.

14. When the investigation progressed, it has come to the fore that the accused-Mohd. Ishaq Shah had purchased around 700 grams of *heroin* from the Petitioner against a sale consideration of ₹ 1.80 lacs and this payment was allegedly made by the following means:

- i. ₹ 1, 20,000/- transferred into the bank account of Iqra Bano, wife of Tanzeer Ahmad (Petitioner); and
- ii. ₹ 60, 000/- transferred into the bank account of Shafayat Ahmad Khan on the instructions of Petitioner.

15. The police obtained the bank statements of the account maintained in the name of the wife of the Petitioner and noticed substantial cash deposits and online transactions in the said account for the relevant period. According to Prosecution, more than 11.00 lacs was deposited into her J&K Bank Account during the year 2024. Thereafter, besides online transfers, deposits were also made through Cash Deposit Machines. In this regard, CCTV footage from the Cash Deposit Machines has also been obtained, which confirms the complicity of the Petitioner. Moreover, the statement of the wife of the Petitioner, namely, Iqra Bano, has also confirmed that the said account is operated by her husband (Petitioner). There are minute details given in the charge sheet regarding the material collected during investigation showing the complicity of the Petitioner.

16. There is another very important aspect of the matter which cannot be lost sight of, i.e., the alleged criminal antecedents of the Petitioner. The record reveals that the Petitioner is also involved in FIR No. 94/2021 of Police Station, Karnah under Sections 8/21 NDPS Act relating to recovery of 4 Kgs of *heroin*, besides FIR No. 03/2025 registered by

Police Station, Parimpora under Sections 8, 21 and 29 of the NDPS Act, where recovery of 9.345 Kgs was allegedly made. Besides his involvement in the above FIRs in respect of drug trafficking, he was also booked under the provisions of the Public Safety Act w.e.f. 18 of November 2022 to 02 of December 2023.

17. Apart from the disclosure statement of the co-accused, there is *prima facie* material in the shape of banking transactions, CDRs and other material collected during investigation which, if accepted at face value, tends to show the complicity of the Petitioner in the commission of the alleged offenses.

18. *Prima facie*, the Petitioner has been sent up for trial for allegedly trafficking in a commercial quantity of *Heroin* pursuant to a well-knit conspiracy. The Trial Court, after drawing *prima facie* satisfaction, has drawn up formal charges against the Petitioner for the offenses punishable under Sections 8/21/22 and 29 of the NDPS Act.

19. It is important to note that in “**Narcotics Bureau V. Mohit Agarwal, (2022) 18 SCC 374**”, a three-Judge Bench of the Hon’ble Supreme Court held that the length of the period of custody, or the fact that the charge sheet has been filed, or even that the trial has not commenced, by themselves, are not considerations that can be treated as persuasive grounds for grant of bail under Section 37 of the NDPS Act.

20. Another important aspect that must receive priority is the conduct of the Petitioner. Although, in the Petition the Petitioner has made a cursory reference to FIR No. 03/2025 of Police Station, Parimpora under Sections 8/21/29 NDPS Act, however, neither in the Petition nor during arguments was it brought to the notice of the Court, but Record reveals that the Petitioner is also accused in FIR No. 94/2021 of Police Station, Karnah under Sections 8/21 NDPS Act and was also booked under Public Safety

Act. The conduct of the Petitioner, therefore, indicates that there is real likelihood of repetition of similar offences if the concession of bail is granted at this stage.

21. It is well settled that while considering the question of bail, the Court must, *inter alia*, take into account likelihood of the offence being repeated as also the character, behavior, position and standing of the accused. Reference, in this regard, may be made to the Judgment of the Hon'ble Supreme Court in **"Neeru Yadav V. State of UP & Anr., AIR 2015 SC 3703"**.

22. Apart from the rigors of Section 37 of the NDPS Act, the statement of the co-accused merely furnished the initial information that enabled the Investigating Officer to probe the larger conspiracy of regular supply of the drug. The investigation, thereafter, succeeded in collecting independent material in the form of bank transactions, CDRs and other material *prima facie* showing the complicity of the Petitioner in dealing with the manufactured narcotic drug. The principle laid in **Mohit Agarwal (supra)**, therefore, assumes significance. It is observed:

"18. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by the learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage."

23. The Petitioner has previously been found involved in a similar offence under the NDPS Act and has deliberately concealed this material fact both before the learned Trial Court and before this Court. Having

regard to the stage of the trial, the conduct of the Petitioner and the larger interests of society, the Petitioner does not deserve the concession of bail at this stage.

24. Insofar as the contention of the Petitioner that the Trial Court rejected the Bail Application in absence of his Lawyer is concerned, it is seen from the perusal of the record that the Petitioner is duly represented by Advocate Rahul Khajuria before the Trial Court, whose presence is recorded in the Order dated 15th of May, 2026, whereby formal charges were drawn up against the accused for commission of offences under Sections 8/21/29 NDPS Act.

25. There can be no quarrel with the proposition that a confessional statement of a co-accused is inadmissible against accused and that the Petitioner cannot be made to suffer solely on the basis of such a statement. If that were the only material against the Petitioner, then the continued incarceration would indeed amount to a violation of Article 21 of the Constitution. However, on scrutiny of the record, it is found that the disclosure statement of the co-accused merely provided the initial information regarding the alleged involvement of a wider network engaged in drug peddling and the Petitioner was the kingpin. The Prosecution has sought to corroborate the alleged involvement of the Petitioner by independent material in the shape of banking transactions and the conversations allegedly exchanged between the co-accused and the Petitioner. Call Detail Records (CDRs) have also been collected. These materials are yet to be formally proved at the trial. At this interlocutory stage, it would neither be proper nor desirable to pronounce upon their ultimate admissibility or evidentiary value, as any such observation is likely to prejudice either side.

26. For the foregoing reasons, the present Bail Application is **dismissed**. It is, however, made clear that the observations made or findings

recorded hereinabove shall not be construed as an expression of opinion with regard to the merits of the trial and that the same shall only be confined to the disposal of the instant Petition.

**(SHAHZAD AZEEM)
JUDGE**

SRINAGAR

August 12th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

No.

