

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

[Through Virtual Mode]

Bail App No. 45/2026

Dated: 7th of August, 2026.

Raju Kumar

S/O Guneshwar Rishidev
R/O Ward No. 46, Bairbana Behri,
Madhepura, Bihar-852128
Through his brother, namely,
Biso Rishidev, Age: 31 Years
S/O Guneshwar Rishidev
R/O Ward No.46, Bairbana Behri,
Madhepura, 852128.

... Petitioner(s)

Through: -

Mr Mumtaz Chowdhary, Advocate.

V/s

Union Territory of Jammu & Kashmir,

Through Station House Officer,
Police Station Ramgarh (Samba).

... Respondent(s)

Through: -

Mr Vishal Bharti, Dy. AG.

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

(JUDGMENT)

01. The Petitioner seeks bail in connection with the offences under Sections 8, 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act [NDPS Act].

02. The Petitioner had earlier moved a similar application before the Court of learned Additional Sessions Judge, Samba [Trial Court], which came to be rejected by Order dated 23 February 2026.

03. The accusation, in brief, against the Petitioner for which he has been sent up for trial is that A1-Sukesh Kumar and A2-Kishore Rishidev

were allegedly intercepted in a special *naka* laid by the police of Police Station, Ramgarh, on 23 January 2025, and during their personal search, heroin weighing 255.39 grams was recovered from the possession of A1 and, accordingly, the accused were taken in custody.

04. During investigation, A1 and A2 made confessional statement before the police that they had received the said heroin from A3 (Petitioner herein) and A4-Daram Nath Rishidev. Consequently, A3 and A4 were also arrested. During their interrogation, they alleged to have made a disclosure statement to the effect that the recovered heroin had been found by them while harvesting the paddy crop from the field of Ashok Kumar R/O Abtal, Tehsil Ramgarh, District Samba. The further allegation that the site plan of the agricultural field was prepared and that, according to the Investigating Officer, the agricultural field constitutes the linking evidence connecting the accused, including the Petitioner, with commission of the alleged offences.

05. From a perusal of the record, it transpires that the Petitioner, along with co-accused, is facing trial. Charges for the offences under Sections 8, 21, 22 and 29 of the NDPS Act were drawn up on 29 September 2025. Till date, out of the eight listed prosecution witnesses, only two witnesses have been recorded so far.

06. The Trial Court rejected the bail application on the ground that the place from where the alleged drug originated, i.e., agricultural field, has been identified and site plan prepared and that the same constitutes additional material against the Petitioner herein.

07. The principal contention of the Petitioner is that, except for the confessional statement of the co-accused, there is not an *iota* of material or evidence against him. On the basis of such inadmissible evidence, it is

urged that the Petitioner cannot be made to suffer and his liberty cannot be curtailed.

08. *Per Contra*, the Respondent-UT has filed the Objections. Except for a narration of the Prosecution story, however, nothing substantial has been stated to oppose the Petition. For the sake of brevity and to avoid repetition, same need not be adverted to in detail. However, learned Counsel for the Respondent-UT vehemently argued that the nature of crime has a serious repercussion on the Society and since the recovered quantity falls within the commercial quantity and, thus, rigors of Section 37 of the NDPS Act are fully applicable. It is further submitted that there is sufficient material on record connecting the Petitioner with the commission of alleged crime, particularly in the shape of site plan of agriculture field, therefore, the Petitioner is not entitled to the concession of bail at this stage.

09. Heard learned Counsel for the parties at length and perused the Trial Court record.

10. Neither from the Prosecution story nor from the material collected during investigation does it emerge that, apart from the confessional statements of the accused, there is any tangible material or evidence against the Petitioner. What is pitted against the Petitioner is that, during interrogation, he identified the field from where he allegedly obtained the packet containing the heroin. Neither the Investigating Officer nor the Trial Court has, however, appreciated that no recovery of any prohibited drug was effected from the possession of the Petitioner, nor was anything recovered at his instance which could constitute an offence under the NDPS Act.

11. It must be realized that the confessional statement of a co-accused has no evidentiary value so as to curtail the liberty of the Petitioner; nor can the Petitioner be made to suffer on the basis of his own confessional

statement recorded by the police. To hold otherwise would amount to a travesty of justice and would be opposed to the right guaranteed under Article 21 of the Constitution of India.

12. When the only material against the Petitioner is the statement of a co-accused made to the police, and there is no recovery, no independent corroboration and no other incriminating material, the twin conditions of Section 37 of the NDPS Act stand satisfied. Continued incarceration is, therefore, not justified. Courts are not expected to treat every allegation as a gospel truth at the stage of bail. The bar under Section 37 of the NDPS Act cannot be invoked where evidence appears inadmissible and is insufficient to bring home the guilt of the accused. The statement of co-accused is not substantive evidence. A disclosure of a co-accused recorded by the police is inadmissible and has no independent evidentiary value against other accused. It has been held in **‘Tofan Singh V. State of Tamil Nadu, (2021) 4 SCC 1**, that officers under the NDPS Act are “police officers” and confessional statements made to them are inadmissible.

13. Having regard to the settled position that a confession recorded before a Magistrate other than a Judicial Magistrate or Metropolitan Magistrate is not admissible in evidence, it is clear that the statement of the co-accused recorded in the presence of an Executive Magistrate, while the maker was in police custody and in presence of police officials, is clearly inadmissible. Even though the quantity of the contraband recovered from the co-accused falls in the category of “commercial quantity”, *prima facie*, there is no admissible evidence on record to connect the Petitioner with the recovery of the aforesaid quantity or to suggest that he was a party to any conspiracy.

14. In the present case, nothing has been recovered from the possession of the Petitioner, nor has any fact been discovered pursuant to

any statement made by the co-accused before a Police Officer. The recovery of the alleged contraband was effected during the special *naka* checking from the possession of the co-accused. *Prima facie*, therefore, the Petitioner could not have been implicated solely on the basis of the confessional statement of the co-accused.

15. In view of the aforesaid facts and circumstances, there appears to be reasonable grounds for believing that the Petitioner is not guilty of the alleged offences. There is nothing on record to show that the Petitioner has any criminal antecedents or that he has earlier been involved in similar offences. Nothing has also been brought to the notice of the Court to suggest that, if admitted to bail, the Petitioner is likely to commit similar offences.

16. For the foregoing reasons, this Petition is **allowed** and the Petitioner is admitted to bail subject to the following conditions:

- i. He shall furnish bail bond and personal bond in the sum of ₹50,000/-, with two sureties of the like amount, to the satisfaction of the Trial Court;
- ii. He shall appear before the Trial Court on each and every date of hearing;
- iii. He shall not leave the territorial limits of the Union Territory of Jammu & Kashmir without the prior permission of the Trial Court;
- iv. He shall not tamper with the Prosecution witnesses or the evidence; and
- v. He shall not indulge in similar activities.

17. Any observation made herein shall remain confined to the decision of the instant Application only and shall not be construed as expression of opinion on the merits of the case.

18. The Bail Application shall stand **disposed** of, accordingly.

19. Registry to send a copy of this Judgment to the Trial Court, for information and compliance.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR

August 7th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting? **Yes.**

