

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

Bail App No.60/ 2026

Reserved on: 08.07.2026

Pronounced on: 16. 07.2026

Uploaded on: 16.07.2026

Whether the part or full

*judgment is pronounced: **Full***

Mohd. Nadeem Samyal (30 Years)
S/O Mohd. Sharif
R/O Lower Mada Gujad Mada,
Udhampur

.....Applicant

Through :- Mr. M. A. Goni, Sr. Adv. with
Mr. S. Tanzeel Illahi, Adv.

V/S

Union Territory of J&K through
Station House Officer,
P.S. Udhampur

.....Respondent(s)

Through :- Mr. Sumeet Bhatia, GA

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner, through the medium of present petition has invoked jurisdiction of this Court under Section 483 of BNSS for grant of bail in a case arising out of FIR No.167/2023 dated 28.11.2026 for offences under Sections 8/15/25 of NDPS Act registered with Police Station Chenani, Udhampur, asserting that his earlier bail plea had been rejected vide order dated 31.03.2026 passed by the learned Additional Sessions Judge, Udhampur, ('Trial Court').

2. Being aggrieved of the order dated 31.03.2026 passed by the learned Trial Court in Bail Application titled 'Mohd. Nadeem Samyal V. UT of J&K', whereby the bail application of the petitioner came to be rejected, the petitioner

has preferred the present bail application seeking enlargement on bail on the grounds that:

- (i) That the impugned order is arbitrary, illegal and contrary to the settled principles of law, and therefore, liable to be set aside;
- (ii) That the trial court has applied rigor of Section 37 of NDPS Act for grant of interim bail but Supreme Court has held that the rigor of these special provisions does not apply to the chronic and lifelong disease;
- (iii) That the trial court has failed to appreciate that the applicant is not the owner of the alleged vehicle at the time of occurrence, as the vehicle in question was sold by the petitioner vide sale deed dated 25.04.2021, thereby negating the essential ingredients of Section 25 NDPS Act;
- (iv) That the petitioner has been falsely implicated in the case merely on the allegation that the petitioner is the owner of the vehicle;
- (v) That the son of the driver who had purchased the vehicle despite repeated requests did not get the RC entries changed from the concerned RTO;
- (vi) That the basic requirement of Section 25 NDPS Act i.e. conscious knowledge and permission by the owner for use of the vehicle in commission of offence, is completely absent in the present case;
- (vii) That the petitioner was not named in the initial challan and was subsequently arrayed as an accused after an unexplained delay of several months;
- (viii) That despite lapse of considerable time after framing of charges, the prosecution has failed to examine material witnesses till date, which shows inordinate delay, violating the petitioner's fundamental right to speedy trial under Article 21 of the Constitution of India;

- (ix) That the trial court has ignored the settled law that prolonged incarceration without progress of trial is a valid ground for grant of bail;
- (x) That the petitioner is suffering from multiple serious and life threatening medical conditions, including acute renal failure and acute epididymo-orchitis, requiring specialized and continuous medical treatment which cannot be adequately provided in custody;
- (xi) That during the period of interim bail petitioner has not jumped over the conditions imposed by the court nor prosecution has even whispered a word about misuse of bail in any manner.

3. The respondent/UT, through its detailed objections has, vehemently, opposed the bail application on the grounds that the petitioner along with his driver was intentionally engaged in the illegal trade of smuggling/transportation of poppy straw in a well planned and organized manner for earning the monetary gains and the petitioner intentionally allowed his vehicle to be used for the purpose of transportation of poppy straw from Kashmir towards the other parts of the country thus destroying the future of the youth of nation; that perusal of CDR and IMEI record clearly shows that petitioner with Mohd Baber visited Anantnag for the illegal purchase of narcotic drugs, to be sold in different parts of the country; that the investigation of the case was completed and supplementary challan as per the provisions of Section 173(8) CrPC of the above said case was produced against the petitioner, in the court of law on 12.11.2024; and that rigor of Section 37 NDPS Act is attracted in the instant case, hence the petition for grant of bail, be dismissed.

4. Learned senior counsel appearing for the petitioner argued that the petitioner was falsely implicated in the case; that charges against the accused

were framed by the trial court on 11.11.2024 and since then, prosecution has deliberately failed to examine its witnesses as only one prosecution witness, namely, Nasreen Begum has been examined, who did not support the prosecution case; that the petitioner is entitled to absolute bail in view of suffering from life threatening diseases; that the trial court has applied rigor of Section 37 of NDPS Act for grant of interim bail but Supreme Court has held that the rigor of these special provisions does not apply in case of chronic and life threatening disease; that prolonged incarceration without progress in trial is a valid ground for grant of bail; that the petitioner is suffering from multiple serious and life-threatening medical conditions, including acute renal failure and acute epididymo-orchitis, requiring specialized and continuous medical treatment which cannot be adequately provided in custody; that the petitioner has not jumped any of the bail conditions imposed by this court while admitting the petitioner to interim bail. Lastly, it is prayed that the interim bail granted to him be made absolute.

5. Learned counsel for the respondent, ex adverso, vehemently, opposed the grant of bail to the petitioner for the reasons that delay in examination of witnesses cannot, in any manner, be an automatic ground for grant of bail in favour of the petitioner; that in view of bar created under Section 37 of the NDPS Act, the petitioner cannot be enlarged on bail as this stage particularly when there is material on record to suggest that he is involved in the alleged crime; that the petitioner has not been able to satisfy the trial court that his truck was not being used for any illegal activity; that as per the statement of specialist doctor, treatment to the petitioner can be provided on need basis in the OPD,

whenever required. Lastly, it is prayed that the bail application be dismissed and the interim bail granted to the petitioner be revoked.

6. Heard learned counsel for the parties, perused the material on the file and considered.

7. As per the prosecution story, on 28.11.2023 at about 08:45 hours, a police party, while performing traffic checking duty at Naka Point Motor Shed NHW Chenani, signaled a Truck No. JK14G-1818, coming from Srinagar, to stop for checking and driver of the above Truck Mohd. Baber was questioned about the load in the Truck; that on not giving satisfactory reply, SPO Raj Singh searched the Truck and found 09 nos. of plastic bags containing poppy straw-like substance, loaded in the body of the said truck; thus, the driver by keeping poppy straw bags, in his possession has committed offences U/S 8/15 of the NDPS Act.

8. Based on this factual background, a case was registered vide FIR No.167/2023 U/S 8/15 NDPS Act, vehicle used for commission of crime was seized and investigation of the case was entrusted to PSI Bua Ditta Bhagat of Police Station Chenani; that during the course of investigation, it was established that the owner of the vehicle though executed an agreement for sale of his Truck No. JK14G1818 to driver of the Truck, but did not transfer the ownership of the said vehicle, so that all the affairs of Truck got managed by him and he was knowingly engaged in the illegal trade and smuggling of Narcotics (Poppy straw) with criminal intention through accused driver; that offence under Section 25 NDPS Act got established against the petitioner, who was arrested on 24.03.2024, for further investigation.

9. A Co-ordinate Bench of this Court, vide order dated 06.04.2026, while issuing notice, admitted the petitioner to interim bail subject to following conditions:

- (i) That the petitioner shall not absent himself from causing personal appearance in the case before the court below on the date/s fixed;
- (ii) That the petitioner shall not leave the UT of J&K without prior permission of the trial court even for the sake of seeking medical treatment;
- (iii) That the petitioner shall not in any manner attempt to influence prosecution witnesses, whether examined in the case or yet to be examined; and
- (iv) That the petitioner to furnish personal as well as surety bond of an amount of Rs. 1.00 Lac each before the Registrar Judicial, Jammu.

10. The petitioner is seeking bail on the ground that he is suffering from multiple serious and life threatening medical conditions, including acute renal failure and acute epididymo-orchitis, requiring specialized and continuous medical treatment, which cannot be adequately provided in custody; that he has not jumped any of the bail conditions imposed while granting him interim bail. Petitioner has also claimed that the vehicle wherefrom contraband was allegedly recovered, had been sold by him to the son of the driver, before the date of occurrence, however, registered certificate had not been transferred in the name of the purchaser, as such, RC continued in his name but he had no control over the vehicle, having been sold by him to the son of the driver of the vehicle.

11. Of course, there was no recovery of any contraband/narcotic from the petitioner and he has been connected with the commission of offence, on the basis of Call Detail Report (CDR) indicating that he was in touch with the main accused, who had used the vehicle registered in the name of the petitioner, with his consent. In view of the shaky and circumstantial evidence, petitioner has raised rebuttable grounds.

12. The Supreme Court in SLA (CrI.) No.11376/2024 titled ‘Amar Sadharam Mulchandani V. Directorate of Enforcement & Anr.’ held that the proviso to Section 45(1) of PMLA specifically contemplates that a person who is ‘sick or infirm’ may be released on bail if the Special Court so directs. The Delhi High Court in Bail App No.2040/2024 titled ‘Dheeraj Wadhawan V. CBI’ decided on 09.09.2024 in a case wherein the applicant claimed to be suffering from multiple co-morbidities and chronic ailments including ischemic heart disease, chronic kidney disease, fluctuating serum creatinine levels, hypertension, observed in paragraph no. 23 as follows:

“23.The arguments advanced on behalf of the applicant and the respondents are considered in right perspective. The applicant is suffering from various ailments as detailed herein above and is falling under category of sick person. The applicant at present may not require hospitalisation and can be treated as outdoor patient but the applicant needs regular and periodical medical attention and treatment under direct supervision of expert and specialist doctors. If the ailments of the applicant are not properly addressed then these ailments may prove to be life threatening. The applicant is required to be treated by the suitable doctors may be at private hospitals. The applicant is entitled for grant of bail as per proviso to section 437 (1) of the Code”.

13. The issue as to whether a statement made by an accused before NCB officials under Section 67 of the NDPS Act is admissible in evidence is no longer *res integra*. The Supreme Court has in a three Judge Bench judgment delivered in the case of Tofan Singh V. State of Tamil Nadu reported as **(2021) 4 SCC 1** held that the confessional statement recorded under Section 67 of the NDPS Act by NCB officials will remain inadmissible in the trial of an offence under the NDPS Act. Therefore, any statement made by accused under Section 67 of the NDPS Act implicating the petitioner or any statement made by the petitioner implicating himself before the officials of NCB in terms of Section 67 of the NDPS Act is not admissible in evidence. It has been clearly held by the Supreme Court that the confessional statement made by the accused/co-accused before the NCB official is inadmissible evidence. Thus, the statement of the co-accused cannot be considered while determining the issue relating to involvement of the petitioner in the alleged crime.

14. The only material that connects the petitioner to the alleged crime that is left is the CDR which has been collected by the investigating agency during the investigation of the case. As per analysis of the CDR, it appears that the petitioner was in touch with the co-accused during the relevant period. The question arises as to whether the same would be sufficient to '*prima facie*' hold that the petitioner guilty of having committed the offence for which he has been arrested. In the opinion of this court, CDR details showing contact between the petitioner and co-accused, without there being any voice recording relating to conversation between them, may not be sufficient to convict the petitioner for the offence for which he has been booked. In this factual background of the case, it is to be considered as to whether petitioner who has renal failure and life

threatening disease, if not treated on a regular basis, even without requirement of hospitalization, can be admitted to bail in a case where rigor of Section 37 of the NDPS Act is applicable.

15. The Delhi High Court while granting bail to the applicants in Bail App. No.900/2025 titled **Vinay Dua v. State Govt. of NCT Delhi** c/w Bail App No.982/2025 titled **‘Raj Kumar Agarwal V. State of NCT Delhi & Anr’** in paras 20, 21 and 25 held as under:

“20. While the veracity of the disclosure statement against the applicants will be tested during the course of the trial, however, at this stage, it cannot be ignored that no recovery was ever effected from the applicants.

21. It is argued that there are certain financial transactions and CDR connectivity between the applicants and co-accused persons. It is also argued that there are certain WhatsApp chats between the applicants and co-accused persons.

16. It has been pleaded by the petitioner that he was arrested on 24.03.2024 after a period of four months of the registration of the FIR, supplementary charge sheet was laid against him on 12.11.2024, and the charges were framed against him on 30.04.2025; that he fell severely sick in the jail and has been suffering of serious disease diagnosed as acute right epididymo-orchitis; that in absence of proper medical remedy, the same will result in a life threatening disease, as such, he had been admitted to interim bail by this court on 06.06.2025. However, the trial Court, on expiry of the interim bail, rejected his bail, which compelled the petitioner to approach this Court again. He further submitted that the petitioner has now been diagnosed as a case of acute renal failure as his creatinine has increased to 4.3, which is a very alarming medical

condition; that both the ailments i.e. acute renal failure (CKD Stage-V) and acute right epididymo-orchitis are life threatening diseases; that he is also suffering from Gastroenterology and deranged coagulogram; that he was advised by Dr. Raju K. Bhandari and Dr. Abdul Majeed, Assistant Professor in Government Super Specialty Hospital, Jammu to undergo kidney Biospy in view of unexplained renal failure; and that he had remained admitted in Government Medical College Jammu; that the Consultant Dr. Raju K Bhandari on 10.02.2026 had reported that ‘the petitioner has been suffering from renal disfunction for more than three years, it has now progressed to chronic kidney disease, a life-long disease, that the patient can be brought from custody to OPD for examination and treatment’.

17. The petitioner has placed on record the medical record of Government Medical College and Hospital, Jammu in support of his contentions, which reveals that the petitioner has been suffering from the aforesaid diseases, which require treatment. In view of serious ailments, the treatment of the aforesaid diseases, in the considered opinion of this court, is not possible to the petitioner as an accused under trial facing incarceration in jail and for that matter, since the disease is life threatening, he is required to be admitted to bail for getting him treated at his own. In view of the judgments referred, the rigor of the Section 37 of NDPS Act applicable to the bails shall not be an impediment for grant of bail on such a serious medical condition of which the petitioner has been suffering.

18. Having regard to the law laid down by Hon'ble Supreme Court and the Delhi High Courts in the cases referred above, the allegations and objections filed by the Investigating Agency, and considering the nature of the offences

with which the applicant has been charged, and especially the medical conditions of the petitioner that in case he does not get the treatment which is not provided in custody, it can be life threatening, this Court is of the considered opinion that the applicant is entitled to be admitted to bail. It will be in the interest of justice if the interim bail granted to the applicant is made absolute, until completion of the trial.

19. In the aforesaid backdrop of the matter, the law cited hereinabove, in view of the facts and circumstances of the case on hand, the bail application is allowed and the interim bail granted to the petitioner/applicant vide order dated 06.04.2026 is made absolute, subject to all the conditions therein.

20. The bail application is, **allowed**, along with connected application(s)

(M A Chowdhary)
Judge

JAMMU
16 .07.2026
Raj Kumar

Whether the order is speaking: Yes
Whether the order is reportable: Yes