

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

**Bail App No. 261/2025
CrIM No. 1850/2025
c/w
CRM(M) No. 999/2025
CrIM No. 1851/2025**

Reserved on: 06.02.2026

Pronounced on: 13.02.2026

Uploaded on: 13.02.2026

Whether the operative part or full judgment
is pronounced: **Full Judgment.**

Mathupotra Sohil

Age 28 Years S/O Arif Bhai R/O
Jangleshwar Society, Street No. 14,
Jangleshwar, Rajkot, Gujrat-361002

.....Appellant(s)/Petitioner(s)

Through: Mr. M. A. Bhat, Advocate.

vs

Narcotic Control Bureau, Jammu

..... Respondent(s)

Through: Mr. Vishal Sharma, (Sr. Advocate) DSGI
With Mr. Eishan Dadichi, CGSC.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

CRM(M) No. 999/2025

1. The petitioner has filed CRM(M) No. 999/2025 for quashing of the order dated 07.08.2025 passed by the learned Principal Sessions Judge (Special Court under NDPS Act), Samba (for short 'the Trial Court'), whereby he has been charged along with others, for commission of offences punishable under Sections 8/20/25/27-A/29 of the NDPS Act. Simultaneously, the petitioner has filed an application for grant of bail bearing Bail App No.

261/2025. Both these petitions are being disposed of by this common judgment.

2. The petitioner has impugned the order dated 07.08.2025 primarily on the ground that the learned Trial Court has relied heavily on confessional statements recorded under Section 67 of the NDPS Act, which are inadmissible in evidence for the purpose of framing charges. Furthermore, the complaint filed by the respondent lacks specific allegations or material evidence against the petitioner. The respondent has failed to attribute any active role to the petitioner regarding the procurement, concealment, transportation, or financing of the alleged contraband and his inclusion as an accused is based solely on his association with the co-accused, devoid of independent corroboration. It is also stated that his statement recorded under Section 164 Cr.PC as well as that of the co-accused, clearly reflects that the petitioner was a mere occupant of the vehicle, neither possessing knowledge, nor participation in the alleged offenses. Additionally, the provisions of Section 27-A of the NDPS Act are inapplicable, as there is no cogent evidence of the petitioner financing illicit activities. While the respondent vaguely refers to bank transactions involving co-accused accounts, no link establishes the petitioner's involvement. Mere Call Detail Records (CDRs) showing communication between petitioner and co-accused do not constitute proof of financing. Accordingly, it is urged that the learned Trial Court has failed to appreciate the controversy properly at hand.
3. Mr. M. A. Bhat, learned counsel for the petitioner has reiterated the submissions made in the memo of petition and has vehemently argued that

the petitioner was merely a co-occupant of the vehicle and except that there is no allegation against the petitioner in respect of any knowledge that such contraband was lying in that vehicle, which is substantiated by the statement made by the petitioner and the co-accused No. 2. He has placed reliance upon the judgments as mentioned in the order impugned.

4. Per contra, Mr. Vishal Sharma, learned DSGI appearing for the respondent, submits that specific prior information was received indicating that the petitioner, acting in concert with other accused persons, was transporting a substantial quantity of contraband from Kashmir to Mumbai. Acting on this intelligence, a *naka* was established, leading to the apprehension of the petitioner and his co-accused and the subsequent recovery of 11 kilograms of Charas (commercial quantity) from the vehicle. He further contends that, at the stage of framing charges or considering discharge, the Court is not required to conduct a meticulous appreciation of evidence. Rather, the evidence is to be sifted solely to determine the existence of a prima facie case sufficient to put the accused to trial. He has further submitted that the learned trial court has rightly passed the order.
5. Heard learned counsel for the parties and perused the record.
6. Record depicts that a complaint titled 'Union of Indiat hrough Sub-Inspector Narcotics Control Bureau, Jammu vs. Khureshi Yasin Inayatalli and others' has been filed by the respondent against the petitioner and other accused for commission of offences punishable under Sections 8/20/26/27-A and 29 of the NDPS Act. It is stated that on 29.03.2024, Sh. Ram Shankar Paswan, Sub Inspector, NCB Jammu received the secret information from a reliable source that four persons namely, Khureshi

Yasin Inayatali, Mitesh C Bagda, Bhatti Feroj and Mathupotra Sohil (petitioner) were smuggling huge quantity of contraband from Kashmir to Mumbai via Samba/Gagwal area by a private vehicle bearing registration No. GJ 18 EA 0002 and they were to reach Samba/Gagwal area between 0600 Hrs to 0800 Hrs on 30.03.2024. On receipt of the said information, the same was recorded by Sh. Ram Shankar Paswan, Sub Inspector, NCB, Jammu and was placed before Sh. Harish Kumar, Assistant Director, NCB on 29.03.2024 for further directions. Assistant Director discussed the matter with Sh. Ram Shankar Paswan and detailed the team consisting of Sh. Ravinder Kumar Bhagat, Sub-Inspector, Sh. Gurmeet Singh, S. A. Sh. Ravinder, S. A. Sh. Vasdev Bhardwaj, Hav. Sh. Ravinder Kumar Sepoy, Sh. Anuj Kumar, Sepoy, Sh. Madan Lal, Driver and Sh. Sandeep Sepoy as driver and issued order dated 29.03.2024 along with search authorisation in the name of Sh. Ravinder Kumar Bhagat, Sub-Inspector, who collected the seal "Narcotics Control Bureau Jammu Zonal Unit 2" from Sh. Harish Kumar, Assistant Director, NCB, Jammu. Accordingly, on 30.03.2024, at about 0430 Hrs. the NCB team left from Jammu for Samba/Ghagwal and reached at NH 44, Police Naka Tapyal near Police Station Ghagwal at about 0540 Hrs. Thereafter, at about 0735 Hrs. the NCB Team noticed the suspected vehicle bearing registration No. GJ 18 EA 0002 coming from Jammu towards Naka Tapyal. Sh. Ravinder Kumar Bhagat and NCB Team signalled the driver of the said vehicle to stop and get the vehicle parked on side of the naka at National Highway 44, District Samba. The driver disclosed his name as Qureshi Yasin Inayat Ali and his other three companions disclosed their names as Mitesh C Bagda, Bhatti Feroj and

Mathupotra Sohil (petitioner). During search of the suspected vehicle bearing registration No. GJ 18 EA 0002 in presence of the independent witnesses and suspected persons, NCB team recovered 02 packets having brown coloured packing tape, which were concealed in the left front window of the said car and 06 packets of suspected contraband concealed in the base of the wiper of front glass of the said vehicle. The packets were opened and during test, were found positive for Charas. The total weight of the moisture charas was found to be 11.355 Kilograms along with packing material. Thereafter, panchnama was prepared and after completing the seizure process, panchnama was read over to all the accused persons in presence of the independent witnesses and then the panchnama was signed by all the suspected persons, both independent witnesses and the Seizing Officer-Sh. Ravinder Kumar Bhagat, Sub-Inspector. The Seizing Officer deposited the seized material in the NCB Malkhana, Jammu on 30.03.2024 and took Godown receipt on 30.03.2024 from Sh. Harish Kumar, Assistant Director, NCB, Jammu vide Godown entry No. 92. Statements of the accused were recorded and on 31.03.2024, a team was detailed by Sh. Harish Kumar to conduct follow up action against the suspect Riyaz Ahmad Dagga. Riyaz Ahmad Dagga appeared before Sh. Koushal Kumar, Investigating Officer on 02.04.2024 and his statement was recorded. He disclosed the name of Umar Batla. Riyaz Ahmad Dagga identified the four accused who were arrested on 31.03.2024. It was Umar who deposited six lakh rupees for charas in the account of Aizaz Ahmad Dagga i.e. brother-in-law of Riyaz Ahmad Dagga. The samples were sent to CRCL, New Delhi Pusa Road vide letter dated 02.04.2024 and report was received from

CRCL on 27.04.2024. The test report confirmed that each sample tested positive for Charas. Efforts were made to conduct search of house of Aizaz Ahmad Dagga and notice was also issued for his appearance before the Investigating Officer, but he did not appear. Statements of Mitesh C Bagda and Mathupotra Sohil were recorded under Section 164 CrPC before the learned Additional Special Mobile Magistrate, Samba on 24.04.2024 and 27.05.2024 respectively, wherein they deposed that the seized drugs were placed by Riyaz Ahmad Dagga in the vehicle bearing registration No. GJ 18 EA 0002. During investigation, it was found that Mobile No. XXXXXXXXXXXX was being used by Mohd. Umar, registered in the name of Majerul Hoque. Notice under Section 67 of the NDPS Act was also issued to Majerul Hoque, but he did not appear before the Investigating Officer. It was also found that another Mobile No. XXXXXXXXXXXX was used by Mohd. Umar, registered in the name of Rizwan Hussain Sayed. Notice under Section 67 of the NDPS Act was also issued to Rizwan Hussain Sayed, but he did not appear before the Investigating Officer. Mobile No. XXXXXXXXXXXX was found to be used by Riyaz Ahmad Dagga, registered in the name of Mymoona Beguam. Notice under Section 67 of the NDPS Act was also issued to Mymoona Beguam, but she also did not appear before the Investigating Officer. It is also stated that CDRs in respect of different mobile numbers were obtained and it was found that all the accused were connected with each other.

7. During investigation it was established that in pursuance of the criminal conspiracy, Khureshi Yasin Inayatli procured 11 Kilograms of Charas from Riyaz Ahmad Dagga, which was financed by Mohd. Umar @ Umar

@ Umar Batla on whose behalf Khureshi Yasin Inayatli transacted in the account of Aijaz Ahmad Dagga who is the brother-in-law of Riyaz Ahmad Dagga. Riyaz Ahmad Dagga kept the seized charas in cavity of the seized vehicle bearing registration No. GJ 18 EA 0002, which was to be delivered at parking place of Ajmer Dargah by Khureshi Yasin Inayatli to Mohd. Umar Sheikh. Mitesh C Bagda, Bhatti Feroj and Mathupotra Sohil came along with Khureshi Yasin Inayatli for consumption of Charas. The entry/exit register of Shreeza Hotel reveals that Khureshi Yasin Inayatli, Mitesh C Bagda, Bhatti Feroj and Mathupotra Sohil stayed on 29.03.2024 at Srinagar and it clearly proved that they were collectively involved in the criminal conspiracy for procuring, possessing, transportation, financing of the contraband and had committed offences punishable under Sections 8/20/25/27-A/29 of NDPS Act.

8. It is settled law that while considering the issue of framing charge against the accused or his discharge, the Court can neither examine the material brought on record in detail nor examine the sufficiency of the material to establish the offence against the accused. In **‘State v. Anup Kumar Srivastava, (2017) 15 SCC 560**, the Hon’ble Apex Court has held that the court can discharge the accused if the court is of the opinion that no offence is made out, but the court cannot examine the material in detail brought on record. The relevant paras are reproduced as under:

“25. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be

necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.

30. It was contended by the learned counsel for the appellant State that the High Court exceeded its jurisdiction while quashing the order of charge passed by the Special Court, CBI Cases. **The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court, a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions.** The court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exist, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.”

(emphasis added)

9. In ‘**State v. R. Soundirarasu, 2022 SCC Online SC 1150**’, the Hon’ble Supreme Court after taking note of the various provisions contained in the Criminal Procedure Code for discharge of the accused, observed as under:

56. Despite the slight variation in the provisions with regard to discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of “prima facie” case has to be applied — if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

57. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar

Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338, **it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record.** The relevant observations made in the judgment are as follows:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

(emphasis added)

10. The Hon’ble Supreme Court, after considering its various pronouncements, has further delineated the principles to be applied by the Court while considering issue of framing charge/discharge in **‘Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC 657’** and the relevant para is reproduced as under:

“27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the chargesheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution.”

(emphasis added)

11. It is contended by the petitioner that he was simply co-occupant of the vehicle and as such, had no role in procurement, concealment, transportation or financing of the alleged contraband seized from the vehicle mentioned above. This contention of the petitioner, in fact, is a defence, and at this stage, the defence of the petitioner cannot be considered. As already mentioned above, all the accused persons resided in Hotel Shreeza on 29.03.2024 and prior information was received by the NCB, Jammu regarding transportation of contraband by all the four accused persons, namely, Khureshi Yasin Inayat Ali, Mitesh C Bagda, Bhatti Feroj and Mathupotra Sohil. This information led to the successful apprehension of the four persons mentioned in the information along with contraband. The petitioner has admitted that he was accompanying the other three accused persons. Interestingly, he filed an application before the learned trial court as to whether the prosecution had cited him as a witness or arrayed him as an accused and the said application came to be dismissed vide order dated 04.06.2025 and after, hearing the petitioner and other accused persons, they were charged for commission of offences punishable under Sections 8/20/25/27-A/29 of NDPS Act.
12. The contention of the petitioner that the learned trial court has relied upon the statements made under Section 67 of the NDPS Act for the purpose of charging him is belied by the observation made by the learned trial court in Para 17 of the order impugned, wherein the learned trial court has observed as under:

“I am not oblivious about non-admissibility of the statements of the accused under Section 67 of the NDPS Act before NCB

Sleuths, but the documentary evidence in the guise of CDRs of Cell Numbers of the accused, the bank transactions do point a finger towards the culpability of the accused prima facie for commission of offences as indicated in the complaint.”

13. These observations were made after taking note of the allegations levelled by the respondent against the petitioner and other accused persons, as such, there is no force in the submission made by the learned counsel for the petitioner that the learned trial court has relied upon the statements made under Section 67 of the NDPS Act.
14. A perusal of the order impugned reveals that the learned trial court also rejected the contention of the petitioner that he had simply accompanied the other accused persons for consumption of Charas, with an observation that this contention is not sustainable because for simply consumption of Charas, accused would have never accompanied the co-accused in the vehicle with such huge quantity of Charas weighing 11 Kilograms. This is quite unbelievable that a person would travel from Gujarat to Srinagar just for consuming charas.
15. All the accused were apprehended together travelling in the vehicle pursuant to secret information carrying the names of all the four accused including the petitioner and their staying together at Hotel Shreeza at Srinagar, subsequent recovery of charas from the vehicle in which all the four accused (including the petitioner) were travelling and at this stage there is sufficient material for connecting the petitioner with the commission of alleged offences.
16. In **Madan Lal vs. State of HP, (2003) 7 SCC 465**, though the judgment was rendered after the trial, the Hon'ble Supreme Court upheld the

conviction of the accused and **observed that the question of “conscious possession” has to be determined with reference to the factual backdrop of each case. The Court held that from the evidence on record, it was discernible that all the accused were travelling together in a vehicle, were known to each other, and had not explained as to how they happened to travel together from the same destination in a non-public vehicle. These circumstances were held sufficient to establish conscious possession.**

17. In view of the guardrails laid down by the Hon'ble Supreme Court of India for the purpose of considering the issue of charge/discharge, this Court is of the considered view that all the contentions, as raised by the petitioner, at the most amount to defence, which the petitioner is well within his right to raise before the learned trial court during trial, but on these grounds, the petitioner cannot be discharged.
18. I have gone through the order dated 07.08.2025 passed by the learned Principal Sessions Judge (Special Court under NDPS Act), Samba, whereby the petitioner along with other accused has been charged for commission of offences punishable under Sections 8/20/25/27-A/29 of the NDPS Act and I do not find any reason to interfere with the well- reasoned order.
19. In view of the above, the present petition is found to be misconceived, and the same is **dismissed** along with the connected application.

Bail App No. 261/2025

1. The petitioner is seeking bail in the case Crime No. 03/2024 of NCB, Jammu on the similar grounds as mentioned above.

2. It is stated that the order, whereby the bail application of the petitioner has been rejected, has overlooked the non-compliance of mandatory statutory requirements under the NDPS Act.
3. The respondent has filed response, thereby narrating the factual aspects of the case, as already mentioned above. It is stated that in view of the bar contained in Section 37 of the NDPS Act, bail cannot be granted to the petitioner.
4. Heard learned counsel for the parties and perused the record.
5. Record depicts that the petitioner earlier had approached the learned trial court for grant of bail, however, the same was rejected vide order dated 29.08.2025.
6. As already mentioned above, the petitioner has been charged for commission of offences under Sections 8/20/25/27-A/29 of the NDPS Act. The quantity of the contraband allegedly recovered from the car is commercial quantity and rigours of Section 37 of NDPS Act are squarely applicable in the instant case. In '**Union of India vs VIGINN K. Varghese**', **2025 LiveLaw(SC) 1101**, the Hon'ble Apex Court set aside the order granting bail with following observations:

18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. **Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.**

(emphasis added)

7. In “**Union of India v. Ajay Kumar Singh**”, 2023 SCC OnLine SC 346, the Hon’ble Apex Court cancelled the bail granted to the respondent-accused with the following observations:

17. The quantity of “ganja” recovered is admittedly of commercial quantity. **The High Court has not recorded any finding that the respondent-accused is not *prima facie* guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender.** In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.

(emphasis added)

8. In ‘**State of Meghalaya v. Lalrintluanga Sailo**’, (2024) 15 SCC 36, the Hon’ble Apex Court has observed as under:

8. As relates the twin conditions under Section 37(1)(b)(ii) of the NDPS Act viz. that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail it was held therein that they are cumulative and not alternative. Satisfaction of existence of those twin conditions had to be based on the “reasonable grounds”, as referred above.

9. In the decision in *State of Kerala v. Rajesh* [State of Kerala v. Rajesh, (2020) 12 SCC 122] , **after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in the offences under the NDPS Act, in para 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii) NDPS Act. Further it was held that in case one of the two conditions thereunder is not satisfied the ban for granting bail would operate.**

10. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under the NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.

(emphasis added)

9. In view of the facts, as narrated above, this Court, at this stage, in absence of any evidence to the contrary, is not in a position to return a finding that

there are sufficient grounds to believe that the petitioner is not guilty of commission of offences, of which he has been charged.

- 10. In view of the above, this Court is of the considered view that the petitioner has not been able to make out a case for grant of bail.
- 11. Accordingly, the instant bail application is found to be misconceived and the same is dismissed along with the connected application.

(RAJNESH OSWAL)
JUDGE

Jammu
13.02.2026
Sahil Padha

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

