

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 286/2025 c/w
CRM(M) No. 1084/2025

Mohd. Hussain & anr.

.... Petitioner/Appellant(s)

Through:- Mr. Syed Muneeb, Advocate

V/s

Union of India

.....Respondent(s)

Through:- Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC

CORAM : HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

15.01.2026

CRM(M) No. 1084/2025

1. After arguing the matter for some time, learned counsel for the petitioners submitted that since the charges have already been framed against the petitioners, he would not press for disposal of the present petition on merits and would contest the matter before the learned Trial Court. However, he prayed that the bail application of the petitioners be considered separately.
2. In view of the submissions so made, the petition, whereby the petitioners had questioned the order of framing of charges dated 02.04.2025 passed by the learned Principal Sessions Judge, Samba, is *dismissed* as not pressed. The learned Trial Court is directed to proceed with the trial in accordance with law.

Bail Application No. 286/2025

1. The petitioners stand charged for offences punishable under Sections 8/21, 27-A, 28 and 29 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (for short, “NDPS Act”). As per the case of the Narcotics Control Bureau (NCB), acting on secret information, on 02.03.2024 at about 1645 hours, an NCB team intercepted a vehicle bearing Registration No. PB-10-HS-7408 coming from Punjab. During the interception, petitioner No. 2, namely Farman Ali, was found travelling in the bus and was allegedly carrying contraband. Upon search, conducted after compliance with the mandate of Section 50 of the NDPS Act, two transparent polythene packets containing heroin, each weighing 100 grams, were recovered from his possession. Consequently, he was detained and, on disclosure, allegedly stated that the consignment had been handed over to him by petitioner No. 1, Mohd. Hussain. In essence, the case of the NCB is that the recovery was effected from the possession of petitioner No. 2, who was allegedly acting in active conspiracy with petitioner No. 1, and that the contraband was meant for illegal sale. Accordingly, both petitioners were booked and have remained in custody since the date of their arrest.

2. It is fairly conceded that formal charges have been framed against both the petitioners and the matter is presently at the trial stage. During the course of arguments, Mr. Vishal Sharma, learned DSGI, submitted that although the recovery falls within the category of intermediate quantity, yet since the petitioners are charged under Section 27-A of the NDPS Act, the statutory bar under Section 37 of the NDPS Act is attracted, rendering the petitioners disentitled to bail.
3. Per contra, learned counsel for the petitioners vehemently argued that Section 27-A of the NDPS Act is not applicable to the facts of the

present case. Relying upon the judgment in *State of West Bengal v. Rakesh Singh*, it was contended that there is no material on record accompanying the charge-sheet to suggest that the petitioners were involved in financing illicit traffic as contemplated under Section 27-A of the NDPS Act. When confronted with this contention, learned counsel for the respondent was unable to point out even an iota of material demonstrating that the petitioners had indulged in financing illicit traffic in narcotic substances. The case, at best, is one of recovery from the possession of petitioner No. 2, allegedly procured from petitioner No. 1.

4. Without delving further into this aspect, prima facie, the recovery pertains to an intermediate quantity of contraband, to which the rigours of Section 37 of the NDPS Act do not apply. The petitioners have remained in custody since the filing of the charge-sheet and, notwithstanding the framing of charges, they are presumed to be innocent until proven guilty in accordance with law.
5. The reliance placed by learned counsel for the respondent on Sections 35 and 54 of the NDPS Act is misplaced at this stage, unless and until the respondent-NCB lays foundational facts before the learned Trial Court demonstrating strict compliance with the mandate of Section 50 of the NDPS Act and establishes the alleged conspiracy between the petitioners. The reverse burden under the NDPS Act can be invoked only after such foundational facts are proved during trial, which is yet to occur. Continued incarceration of the petitioners, in the meantime, would amount to an unwarranted curtailment of their personal liberty and would be contrary to law.

6. Prima facie, therefore, a case for grant of bail is made out. Merely because the learned Trial Court has found sufficient grounds to proceed with the trial does not, by itself, disentitle the petitioners from being enlarged on bail, particularly when Section 37 of the NDPS Act is not attracted in the present case.
7. In view of the aforesaid discussion, the bail application is allowed. The petitioners are admitted to bail, subject to the following conditions:
- (i) They shall furnish personal bonds in the sum of ₹1,00,000/- each, with one surety of the like amount, to the satisfaction of the learned Trial Court.
 - (ii) They shall cooperate with the trial and shall appear before the learned Trial Court as and when directed, without fail;
 - (iii) They shall not leave the territorial jurisdiction of the Union Territory of Jammu & Kashmir without prior permission of the learned Trial Court;
 - (iv) They shall not, directly or indirectly, make any inducement, threat or promise to any of the listed witnesses or any other person acquainted with the facts of the case, so as to dissuade them from disclosing such facts during trial; and
 - (v) They shall not indulge in any offence similar to the one with which they are charged in the present case.
8. The bail application stands *disposed* of accordingly.

(SANJAY PARIHAR)
Judge

JAMMU
RAM MURTI
15.01.2026