

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

(Virtual Mode)

Bail App 296/2025

Reserved on: 05.03.2026

Pronounced on: 08.09.2026

Uploaded on: 08.09.2026

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

1. Peer Saif Din, aged 60 years ...Petitioner(s)
S/O Peer Abdul Gani
R/O Waskura Handwara
Kupwara
Through his wife Shareefa,
aged 58 years
W/O Peer Saif Din R/O
Waskura Handwara

Through: Mr. Aijaz Ahmad Bhat, Advocate with
Mr. Abrar H. Khan, Advocate

Vs.

1. Union of India through Sub- ...Respondent(s).
Inspector Narcotic Control
Bureau, Jammu Zonal Unit,
House No. 322, Sec-C Sainik
Colony Jammu 180011

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, Advocate (th. virtual mode)

CORAM: HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGEMENT

1. Through the medium of the instant bail application,
having been filed in terms of the provisions of Section 439 of
the Code of Criminal Procedure, 1973 (now repealed and

hereinafter referred to as the Code for short), corresponding to the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, BNSS), the petitioner/accused has sought his enlargement in Crime No. 11/2018 of the Narcotic Control Bureau, Jammu Zonal Unit, registered under Sections 8/21, 28, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), on the main grounds that he is innocent and has not committed the alleged offences. That his earlier application dated 18.08.2025 for grant of bail in his favour, filed before the Court of the learned Additional Sessions Judge, Kathua (with powers under the NDPS Act) (hereinafter referred to as the trial court for short), came to be dismissed vide order dated 11.10.2025 without appreciation of the facto-legal grounds pleaded therein. That there was no legal evidence with the respondent-agency justifying his involvement in the case. That the petitioner/accused was arrested much after the presentation of the final report/chargesheet against the alleged main accused persons from whom the alleged narcotic drug-heroin, is alleged to have been recovered. That the petitioner/accused came to be arrested in the case on the basis of the statements of the alleged main accused persons made by them during investigation in the case in terms of the provisions of Section 67 of the NDPS Act. That the accused figuring in the main chargesheet are alleged to have accused

the petitioner of being the main supplier of the recovered narcotic substances. That during the course of further investigation, a supplementary challan came to be presented by the respondent-agency on 15.05.2024 against the petitioner, who voluntarily surrendered before the Court. That his custody was illegally handed over to the respondent-Bureau with effect from 17.05.2024 to 20.05.2024, during which illegal custody he is alleged to have confessed his guilt. That the petitioner/accused stands linked with the occurrence on the basis of the Call Diary Records. That the petitioner/accused vehemently opposed the framing of any charge against him, but the learned Trial Court proceeded to frame the charge against him. That the learned Trial Court denied bail to the petitioner/accused on the mere ground that he stands charged for the offences under the NDPS Act in relation to commercial quantity, attracting the bar under Section 37 of the Act. That the main alleged accused stand admitted to bail in the case. That the statements alleged to have been made by the co-accused, as well as the petitioner himself, in terms of Section 67 of the NDPS Act cannot be considered in isolation and have to be read in synergy with the provisions of Sections 25 and 27 of the Evidence Act. That the alleged statements could not be corroborated by the respondent-Bureau through any subsequent recovery or even identification of a new fact and are, as such, inadmissible in

view of the law laid down by the Hon'ble Supreme Court of India in Toofan Singh's case. That the learned Trial Court has misinterpreted the provisions of Section 37 in relation to the petitioner/accused, as the allegations against him do not seem to be prima facie true. That the provisions of Section 29 of the NDPS Act, also charged against the petitioner, are not at all prima facie established, as the respondent-Bureau could not establish any express or implied agreement as to the commission of the offences charged, between the petitioner and the co-accused. That the petitioner/accused is an old-aged person suffering from multiple age-related ailments. That the petitioner shall abide by any conditions that may be imposed by this Court.

2. The respondent-Bureau has resisted the application through the memo of objections on the grounds that the petitioner is involved in the commission of heinous and anti-social offences, providing for stringent punishment, and, as such, he does not deserve his enlargement on bail to the prejudice of public confidence in the justice delivery system. That the liberty of an individual is subject to some reasonable exceptions and the arrest of the petitioner has been made in accordance with the procedure established under Article 22 of the Constitution of India. That the petitioner is involved in the commission of the offences under the NDPS Act in

relation to commercial quantity. That the learned Trial Court has already framed charges against the petitioner/accused under Sections 8/21, 28, 29 and 60 of the NDPS Act in the backdrop of the facto-legal scenario of the case.

That, based on specific information, the respondent-Bureau, Jammu Zonal Unit, effected the seizure of 22.145 Kgs of heroin at Pali Morh, Kathua (J&K), on 02.09.2018 from the possession of Bashir Ahmed Mir S/o Ali Mohd. Mir R/o Village Lachipora, Kupwara, J&K; Feroz Ahmad Sheikh S/o Gh. Mohi-ud-din R/o Sheikh Colony, Bagathpora, Handwara, Kupwara; and Waseem Ahmed Bhat S/o Mohd. Sultan Bhat R/o Shailal, Handwara, Kupwara, from a vehicle bearing registration No. JK03C4756, and all the said accused came to be arrested. That during the follow-up action at Handwara, the NCB team recovered 38.070 Kgs of heroin from 02 jute bags, which were kept in straw in front of the house of accused Bashir Ahmed Mir S/o Mohd. Mir R/o Village Lachipora, Kupwara, J&K.

That during the investigation of the case, all the three accused made a disclosure in their statements recorded under Section 67 of the NDPS Act to the effect that the petitioner/accused was the main supplier of the seized heroin. That the petitioner/accused himself also, during his statement recorded under Section 67 of the NDPS Act, made

a voluntary admission on 19.05.2024 to the effect that he supplied the seized heroin, i.e., 60.215 Kgs, to Bashir Ahmed Mir, with the further admission that he used mobile No. 9797785866 for trafficking the seized heroin. That the analysis of CAF and CDR revealed that the aforementioned mobile number was registered in the name of the petitioner/accused and that he was in continuous contact with Javed Ahmad Pir (supplier of the seized contraband).

That a supplementary complaint against the petitioner/accused was filed before the learned Trial Court on 03.10.2024. That the petitioner is not innocent, as he is involved in non-bailable and cognizable offences under Sections 8/21, 28, 29 and 60 of the NDPS Act in Crime No. 11/2018 of NCB Jammu. That he, along with the co-accused, has been found involved in the case. That a huge recovery of the narcotic drug has been effected in the case involving the petitioner and the co-accused persons. That the bail application is hit by the provisions of Section 37 of the NDPS Act, as a huge commercial quantity of narcotic substance is involved in the case. That the act of the petitioner and his associates is highly detrimental to society at large, especially the youth.

That the petitioner/accused does not deserve the concession of bail, having regard to the gravity of the offence

and the impact of the crime on society. That the petitioner/accused, despite repeated summons, remained absconding for more than 5 years until he surrendered before the Trial Court on 15.05.2024, whereafter a supplementary complaint was filed against him disclosing the commission of heinous and non-bailable offences by him. That the petitioner/accused has direct involvement in the case involving commercial quantity of narcotic substances and, as such, he does not deserve any concession of bail.

3. I have heard learned counsel for the parties in respect of the matter.

4. The learned counsel for the petitioner/accused Mr. Aijaz Ahmad Bhat, Advocate while reiterating his stand already taken in the bail petition submitted that the petitioner has been falsely and frivolously implicated in the crime, who is innocent. He contended that the petitioner was not apprehended on the day of the alleged occurrence i.e., 02.09.2018. That narcotic substance is not alleged to have been seized from and at the instance of the co-accused. That the petitioner has been involved in the case on the basis of the alleged statements of the co-accused persons as well as his own statement purported to have been recorded in terms of section 67 of the NDPS Act, which statements even if would have been extracted are not admissible and reliable as the

same have not led the respondent-Bureau to any further recovery or even identification of a new fact. The learned counsel in support of his arguments placed reliance on the three judge bench judgement of Hon'ble Supreme Court cited as Toofan Singh Vs. State of Tamil Nadu (2021) SCC 1 and submitted that it has been authoritatively held in the said judgement that confessional statements recorded under Section 67 of NDPS Act are inadmissible in the trial of offences under NDPS Act. He submitted that the Hon'ble Apex Court in the said case reasoned that officers of the Central and State Agencies under the NDPS Act are essentially police officers, thus, rendering such confessional statements inadmissible. He further contended that the alleged confessional statement did not lead the respondent-Bureau to any recovery from the petitioner so as to make any such statement admissible under Section 27 of the Evidence Act. The learned counsel further contended that the petitioner/accused voluntarily surrendered before the Trial Court. He contended that the respondent-Bureau in alleging on the basis of CDR analysis that he was in touch with accused persons cannot furnish proof in support of the prosecution case in absence of incriminating voice recording. He further submitted that the petitioner is an old aged person of 65 years of age who has his wife and grown up daughters at home who has been suffering badly on account

of his continuous detention since his arrest on 19.05.2025. He contended that the bar under section 37 of the NDPS Act is not at all attracted in the facts and circumstance of the case as on the basis of mere vague and general allegations, his alleged involvement cannot be supposed to be prima facie true. He further contended that section 29 of NDPS Act also charged against the petitioner is not at all made out in the facts and circumstances of the case as no conspiracy can be supposed in the facts and circumstance of the case. The learned counsel further contended that bail is a rule and its denial an exception especially in cases which do not carry sentence of death or imprisonment of life in alternative and secondly where there appear no reasonable grounds of accused's misusing the concession of bail by tempering with the prosecution evidence and absconding at the trial. He submitted that the petitioner is ready to abide by any conditions that may be imposed by this court while enlarging him on bail.

5. *Per contra*, the learned counsel for the respondent-Bureau vehemently submitted that the petitioner/accused is not entitled to seek the concession of bail for being involved in a heinous, non-bailable and anti-social offences under the NDPS Act, in relation to commercial quantity.

He contended that the petitioner, during the investigation of the case, has come to be identified as the main supplier of the seized consignment of the narcotic substance, i.e., heroin. That the co-accused, who were arrested on spot on the date of occurrence, i.e., 02.09.2018, as also the petitioner himself, on his arrest, made disclosure to the effect of his involvement as the main supplier.

He contended that the petitioner, after the occurrence took place, absconded during a period of five years and did not turn up despite issuance of repeated summons. That he lastly surrendered before the Trial Court on 15.05.2024, whereupon his custody was sought by the respondent-Bureau for some days to enable it to complete the further investigation and to file a supplementary complaint, which was done on 03.10.2024.

The learned counsel for the respondent, Mr. Vishal Sharma, learned DSGI, contended that the petitioner was formally charged for the commission of offences under the supplementary complaint, as there was sufficient material, including the confessionary statements under Section 67 of the NDPS Act as well as case diary record analysis regarding his involvement.

The learned counsel submitted that since a huge quantity of the narcotic substance, heroin, stands seized in the case, as such, the bar under Section 37 NDPS Act is attracted in the case.

He further submitted that the act committed by the petitioner is highly anti-social, being heinous in nature. He further contended that the petitioner, who absconded for five years after the occurrence, is likely to misuse the concession of bail, if granted in his favour, by tampering with the prosecution evidence and absconding at the trial.

He further submitted that, in view of the guiding principles being evolved from time to time for consideration of bail applications, especially in NDPS cases, including heinousness of the crime, severity of punishment, likelihood of the accused fleeing from justice, reasonable apprehension of the accused misusing the concession of bail, and the impact of the crime on the society and the State, the petitioner/accused does not deserve leniency to the prejudice of the society, especially the youth.

I have perused the record of the instant bail petition, the objections filed in rebuttal by the respondent, and have also accorded thoughtful consideration to the rival arguments advanced on both the sides.

6. The facts of the prosecution case relevant for disposal of this application are that on 02.09.2018, an officer of the respondent-Narcotics Control Bureau (NCB), Jammu, recovered/seized 22.145 Kgs of heroin from the possession of Bashir Ahmad Mir S/o Ali Mohammad Mir R/o Village Lachipora, Kupwara, J&K, Feroz Ahmad Sheikh S/o Gh. Mohi-ud-din R/o Sheikh Colony, Bagathpora, Handwara, Kupwara, and Waseem Ahmad Bhat S/o Mohd. Sultan Bhat R/o Shailal, Handwara, Kupwara, from vehicle bearing registration No. JK03C4756 at Pali Morh, Kathua (J&K), and arrested the said persons for commission of offences under Sections 8/21, 28, 29 and 60 of the NDPS Act. That the vehicle concerned was also seized.

That three arrested persons, from whose possession the contraband was seized from the aforementioned vehicle, voluntarily disclosed that the seized contraband was to be delivered to Paramjit Singh S/o Jagit Singh R/o Tarn Tarn (PB), at Transport Nagar, Jalandhar (PB), on 03.09.2018.

That the accused Bashir Ahmad Mir also disclosed that 38 packets of heroin had been concealed at his village, Lachipora, Handwara, Kupwara. That during further follow-up action, Paramjeet Singh S/o Jagit Singh R/o Tarn Tarn (PB), proposed receiver of the seized contraband, was arrested on 04.09.2018.

That subsequently, during investigation, a team of respondent-Bureau recovered 38 packets weighing 38.070 Kgs of heroin in front of the house of the accused Bashir Ahmad Mir at Lachipora, Handwara, Kupwara.

That all the aforesaid three persons, from whom the alleged contraband was recovered from the vehicle, disclosed during their statements recorded under Section 67 of the NDPS Act that the supplier of the said contraband was Hazee Peer @ Peer Saif Din R/o Washkura, Handwara, Kupwara, J&K.

That the NCB team accordingly visited Handwara on 15.04.2019 for follow-up action to arrest the suspect Hazee Peer @ Peer Saif Din, who, however, could not be arrested as he was found to have gone absconding.

That accused Bashir Ahmad, in his statement under Section 67, identified the photographs of the heroin supplier as Peer Saif Din S/o Peer Abdul Gani R/o Washkura, Handwara, Kupwara, and Javed Ahmad Pir S/o Mohd. Yousif R/o Badakot, Machipora, Handwara, Kupwara.

That the accused Javed Ahmad Pir, upon being arrested, also disclosed during his statement under Section 67 of the NDPS Act that the seized drugs were supplied by Peer Saif Din @ Shah Peer @ Hazee Peer.

That the petitioner/accused, however, did not appear before the Investigating Agency despite issuance of notices to him under Section 67 of the NDPS Act.

That after the completion of the investigation, complaint was filed before the learned Trial Court against the accused persons Bashir Ahmad Mir, Feroz Ahmed Sheikh, Waseem Ahmed Mir and Javed Ahmed Peer on 27.05.2019 within the stipulated time limit, but the investigation as against the absconding accused Peer Saif Din was kept open, who did not join the investigation till that time.

That on 15.05.2024, the petitioner/accused surrendered before the learned Trial Court, who, as per the directions of the Court, was lodged in District Jail, Kathua. That the Court, on the request, granted 4 days' custody of the petitioner/accused to the NCB for facilitation of investigation.

That the petitioner/accused, during his statement recorded under Section 67 of the NDPS Act on 19.05.2024, stated that he was the supplier of 60 Kgs heroin seized by the NCB and accepted his guilt, whereupon he was formally arrested on 19.05.2024.

That during the course of investigation, the IO received CDR and CAF of mobile numbers of the accused persons, which revealed their *inter se* communications during few days

prior to the occurrence of 02.09.2018. That after completion of investigation, supplementary complaint was filed against the petitioner/accused.

7. A perusal of the record of the instant bail petition reveals that one Satbir Singh @ Mannat was also arrested during investigation of the case.

The accused persons Bashir Ahmad Mir, Feroz Ahmed Sheikh, Waseem Ahmad Bhat and Paramjeet Singh came to be formally charged for the commission of offences under Sections 8/21, 28, 29 and 60 of the NDPS Act vide order dated 06.01.2023, when the accused persons Javed Ahmad Peer and Satbir Singh came to be discharged in the case.

The charge against the present petitioner, on the basis of the supplementary complaint, came to be framed by the learned Trial Court vide order dated 08.02.2025 under Sections 8/21, 28, 29 and 60 of the NDPS Act. Upon pleading not guilty by the petitioner/accused, the prosecution was directed to lead evidence in support of the complaint.

8. A perusal of the record reveals that despite the fact that the main complaint was filed before the learned Trial Court against the co-accused persons on 27.05.2019, the case is still at the stage of recording of prosecution evidence.

9. The learned counsel for the petitioner-accused, during his arguments, inter alia, contended that the crime number in question came to be registered by the respondent-Bureau upon receipt of specific information, but during the investigation of the case, the mandatory provisions of the NDPS Act, especially under Section 50, were observed in breach.

He further contended during his arguments that the trial in the case is proceeding at a snail's pace and even during the last seven years, the recording of the evidence is not complete at trial.

The learned counsel for the petitioner, during his arguments and in support of his contentions that the petitioner-accused is entitled to bail on account of delayed trial, placed reliance on the judgment cited as ***Rubi Prakash versus State of Odisha, 2023 LiveLaw (S.C.) 533***, in which bail was granted to the appellant/accused on the ground that despite commencement of trial, only one out of 19 witnesses had been examined.

The learned counsel contended that the Hon'ble Apex Court further observed in the said case that conclusion of the trial will thus take some more time. Paragraphs 3 and 4 of the said judgment deserve needful mention as under:

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent-State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

10. The learned counsel for the petitioner/accused, during his arguments, also placed reliance on another judgment of the Hon’ble Supreme Court cited as **“Nitish Adhikary @ Bapan v. The State of West Bengal”, Special Leave to Appeal (Crl.) No. 5769/2022**, in which the Hon’ble Court directed the release of the appellant/accused on the ground that he had undergone custody for a period of one year and seven months and the trial was at the preliminary stage.

The learned counsel for the petitioner/accused, during his arguments, also placed reliance on the judgment of this Court in Bail App No. 21/2025 titled **“Sareed Ahmad Ganie**

v. UOI and Anr.”, decided on 18.10.2025, in which, under similar circumstances, the Court enlarged the accused on bail, as he had been charged on the basis of the disclosures made by the co-accused under Section 67 of the NDPS Act, as also on the basis of the Call Diary Reports.

11. The learned counsel for the respondent-Bureau, however, during his arguments, placed reliance on the judgment of the Hon’ble Supreme Court of India cited as **Narcotics Control Bureau v. Kashif, Criminal Appeal No. 5544 of 2024 @ Special Leave Petition (Crl.) No. 12120 of 2024**, and contended that it has been held by the Hon’ble Apex Court that in NDPS cases where the offence carries a minimum sentence of 10 years, the accused shall generally not be released on bail and that negation of bail is the rule and its grant is an exception. The relevant portions of the judgement are reproduced as hereinunder:

“8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public

Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii)”

12. The co-accused are reported to have been bailed out in the case. The learned trial court while denying bail to the petitioner/accused vide its order dated 11.10.2025 has inter alia observed that “the charge has been framed against the accused and the case is at the stage of prosecution evidence. No prosecution witness has been examined so far, so this court is not in the position to hold that there are reasonable grounds for believing that the petitioner is not guilty of the offences charged against him or

that he is not likely to commit any offence while on bail.”

13. Without making any comments as regards the merits of the case, which are to be adjudicated at the trial of the case, this Court is of the opinion that it may meet the ends of justice in case the petitioner/accused is admitted to bail in the crime number in question, subject to some reasonable terms and conditions.

The petitioner/accused came to be formally arrested in the case on 19.05.2024, subsequent to his surrender before the learned Trial Court on 15.05.2024. Supplementary complaint came to be filed by the respondent-Bureau against him on 03.10.2024, when the main complaint had already been filed on 27.05.2019.

The co-accused in the main charge-sheet came to be formally charged in the case on 06.01.2023. The petitioner came to be charged in the case for the offences under the complaint on 08.02.2025. The case is reported to be still at the stage of recording of prosecution evidence.

The co-accused are already reported to have been bailed out in the case. The petitioner/accused is reported to be behind the bars since his surrender on 15.05.2024, followed by his formal arrest in the case on 19.05.2024. So, the

petitioner/accused is facing detention for the last more than two years. The trial in the case is likely to take much more time.

14. The case of the petitioner is that he has been falsely implicated in the case on the basis of the alleged statements/disclosures made by the co-accused, as well as by himself, in terms of Section 67 of the NDPS Act, which are not admissible for having not led to any recovery or identification of any fact.

15. The learned counsel for the petitioner has mainly relied upon the judgment of the Hon'ble Supreme Court in **Toofan Singh's** case. The respondent-Bureau is alleging the involvement of the petitioner on the basis of the CDR analysis.

The learned counsel for the petitioner, during his arguments, *inter alia*, contended that mere proof of communication between the petitioner and the co-accused during the days preceding the occurrence is not sufficient to establish the fact in the absence of production of voice recordings. However, the aforesaid issues can be addressed better at the trial of the case.

It was also submitted by the learned counsel for the petitioner/accused during his arguments that the crime

number in question came to be registered on the basis of the recovery made pursuant to prior specific information and despite the fact, the mandatory provisions of the NDPS Act, especially those contained under Section 50, were observed in breach by the Investigating Officer.

16. The learned counsel, during his arguments, *inter alia*. submitted that the investigating officer has observed the mandatory provisions of the NDPS Act in breach, which justifies the enlargement of the petitioner/accused.

17. Admittedly, the provisions of the NDPS Act providing for presumption in terms of Sections 35 and 54 can be invoked only after the prosecution is able to lead any cogent evidence supporting the foundational facts of its case. Intention of the legislature is that when stringent punishments are provided under the NDPS Act, there should be sound safe guards to ensure that innocent persons are not harassed or unnecessarily detained by any arbitrary or whimsical actions of the police or other authorities. The provisions of a statute have to be interpreted *inter alia* with reference to the intention of the legislature. A perusal of the provisions of NDPS Act leads no doubt that while the legislature wanted to curb the menace of drug addiction with heavy hand by providing stringent punishment, it was nevertheless conscious of the constitutional requirement that

liberty of an individual must not be curtailed and in order to avoid or lessen the possibility of false implication, it provided sound procedural safe guards. The Provisions which stand incorporated in Sections 52 clause (1) and 57 NDPS Act to be followed after search and arrest of the accused or seizure are mandatory in character.

The learned counsel for the petitioner during his arguments also contended that in the facts and circumstances of the case, especially having regard to the evidence recorded at the trial so far, no reasonable ground appears to be made out regarding the involvement of the petitioner/accused, in the case

A criminal court while recording his satisfaction as to whether there appear “reasonable grounds” of involvement of an accused in the commission of an offense attracting the bar in terms of provisions of Section 37 NDPS Act., has to use its discretion in a judicious manner so that no miscarriage of justice happens either by grant of bail or by denial of the same.

The “reasonable grounds” of involvement can be inferred from the facts and circumstances of the case especially, the nature of the evidence. The Court is supposed to consider the broader probabilities to reach its supposition regarding the existence of reasonable grounds of involvement of the accused.

The words “reasonable grounds” cannot be read to mean proved as used in ‘*Bharatiya Sakshya Adhiniyam*’. Such an interpretation would in my opinion set at naught the power vested in a court to grant bail pending trial.

The expression “reasonable grounds” would obviously mean something more than mere suspicion and conjectures and something less than proof. It would necessarily mean such grounds or material that would prima facie enable a person of ordinary prudence to believe that the accused is or is not guilty.

It is no doubt true that the object of the legislation of such disabling provisions is to prevent the offenders from immediately granting bail in heinous offences. In this view of the matter, the court is required to examine the material placed before it and then to arrive at a conclusion that there exist “reasonable grounds” to believe that accused is guilty or not guilty

The “reasonable grounds” would vary from case to case and from one accused to another. What may be reasonable in one case may not be so in another and therefore the words “reasonable grounds” cannot, on account of a discretion vested in the court, be put into a straight-jacket. Each case would have to be dealt with and examined on its own facts and

decided keeping in view the mandate of law. The consideration at the time of taking up of the bail application for disposal is different from the consideration adopted at the end of the trial for holding an accused guilty or not guilty. In considering an application for bail, court is not required to conduct a preliminary trial. The Courts while deciding bail applications will be traversing beyond their ambit and would be exceeding their limit of functions if they engage themselves in discovering the guilt or innocence of the accused which can only be determined at the trial stage. The courts should not go at a tangent in order to find out the possible excuses for grant bail. Whether there are “reasonable grounds” or not is the question which must be decided judicially, that is to say there should be some tangible evidence on which the Court might come to the conclusion that if unrebutted, the accused might be convicted. Whether there are reasonable grounds for believing that a person is guilty of such an offence depends on what evidence is offered by the prosecution to the charge against him.

In order to come to the conclusion, that a person is guilty, the Court must consider the evidence which if unrebutted may lead to conclusion that the charge against him stands proved and cannot unjustifiably hold that there are “reasonable grounds” for believing that he is guilty. It is a settled position of law that the real question whether there are reasonable grounds

for believing that a person is guilty of offences attracting bar under Section 37 NDPS Act, depends upon what evidence is offered by the prosecution to prove the charge against him. While reaching such conclusion, the Court must consider the nature and character of evidence against him.

The petitioner/accused is reported to be a senior citizen, being more than 60 years of age, and is not keeping good health. He is reported to be suffering from a cardiac problem and has already been implanted with a stent.

18. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the

Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

19. In **State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447**, the Hon'ble Apex Court has held, "basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

20. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:

- i. The judicial discretion must be exercised with the utmost care and circumspection;*
- ii. That the Court must duly consider the nature and the circumstances of the case;*
- iii. Reasonable apprehension of the witnesses being tampered;*
- iv. Investigation being hampered or*
- v. The judicial process being impeded or subverted.*
- vi. The liberty of an individual must be balanced against the larger interests of the society and the State.*

- vii. The court must weigh in the judicial scales, pros and cons varying from case to case.*
- viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;*
- ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;*
- x. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.*
- xi. The facts and circumstances of the case play a predominant role.*

21. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 1632**, referred to the following extract from the American Jurisprudence having bearing on the subject of bail,

“where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail”.

22. It has been laid down by the Hon'ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation AIR 2012 SC 830** at Para 14 of its Judgment as under:-

14) *"In bail applications, generally, it has been laid down from the earliest times that the **object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail.** The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that **punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. **From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary** to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of **prevention being the object of a refusal of bail,** one must not lose sight of the fact that **any imprisonment before conviction has a substantial punitive content and it would be***

improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

23. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon’ble Apex Court cited as **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40** in which the bail was granted to the appellant who was involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference:-

“24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”

“25. The provisions of [Cr.P.C.](#) confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

24. In **Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280**, the Hon’ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with,

the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

25. The observations of the Hon’ble Apex Court laid down in **State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21** at para 18 of the judgment also deserve a needful mention:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will

use his liberty to subvert justice or tamper with the evidence, then bail will be refused.”

26. The Hon’ble Apex Court in Sanjay Chandra’s case cited supra has *inter alia* held at para 40 of the judgment, “the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required.”

27. The Hon’ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98**, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article

21 of the Constitution of our country in a flexible and broader sense. It has been *inter alia* observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

28. Admittedly, the offences charged against the petitioner/accused are hit by the provisions of Section 37 of the NDPS Act, which are reproduced hereinafter for ready reference:

"37. Offences to be cognizable and non-bailable.—

(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) *every offence punishable under this Act shall be cognizable;*

(b) *no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*

(i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

29. Thus Section 37 of the NDPS Act clearly provides that in cases involving offences relating to possession of commercial quantity of contraband substances, in addition to the restrictions imposed by the Code of Criminal Procedure for grant of bail, certain other conditions have been imposed on the power of the Court to grant bail. These conditions include a prior notice to be issued to the Public Prosecutor so as to give him an opportunity to oppose the bail application. Further, for granting bail to the accused, the Court has to be satisfied that there are reasonable grounds for believing that the person seeking bail is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. Admittedly, the Hon’ble Supreme Court has in the case of *Narcotics Control Bureau vs. Mohit Aggarwal*, 2022 Live Law (SC) 613, after relying upon its earlier judgments on the subject, observed as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty

of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

31. For the foregoing discussion, and without commenting on the merits of the case which obviously shall be the subject matter of final disposal of the trial case, petitioner-accused is admitted to bail in the Crime No. 11/2018 dated 02.09.2018 (File No.19/2024 dated 03.10.2024) of Narcotic Control Bureau (NCB) Jammu Zonal Unit under Section 8/21, 28,29 & 60 of the NDPS Act subject to his furnishing surety and personal bonds to the tune of Rs. 1,00,000/- each (surety bond Rs. 1,00,000/- to be furnished by two sureties from amongst the near relatives of the

petitioner/accused, each liable to the extent of Rs. 50,000/-) respectively to the satisfaction of the learned Registrar Judicial, Jammu and the Superintendent of jail concerned, for assuring the fulfillment of the following conditions:

- i. Petitioner-accused shall remain punctual at the trial of the case.
- ii. The Petitioner shall not directly or indirectly make any inducement, threat, or compromise to any of unexamined prosecution witnesses so as to dissuade them from making their factual averments at the trial.
- iii. Petitioner shall not leave the limits of UT of J&K without the prior permission of the learned trial court.
- iv. Petitioner shall not repeat the commission of crime.

32. In case the requisite surety bonds are furnished to the satisfaction of the learned Registrar Judicial Jammu and duly attested, a formal release order shall be issued by learned Registrar Judicial Jammu directing the release of the petitioner-accused from the place of his lodgment in the Crime Number in question, subject to petitioner's furnishing

of personal bond in the amount of Rs. 1,00,000/- to the satisfaction of the Superintendent of jail concerned.

33. Learned trial court shall be competent to proceed against the petitioner-accused in terms of provisions of Sections 491 and 492 of the BNSS corresponding to Sections 446, 446-A of the Code in the event of violation of any bail conditions.

34. It is reiterated that references made to the rival pleadings and the arguments of the learned counsel for the parties shall not be construed as any interference with or prejudging of the merits of the case as the facto-legal discussion under this order has been made for the limited purpose of disposal of this bail petition.

35. Disposed of.

**(MOHD YOUSUF WANI)
JUDGE**

SRINAGAR

8th September, 2026

“Mubashir”

- i. Whether the judgment is speaking: Yes*
- ii. Whether the judgment is reportable: Yes*