

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

Bail App No. 303/2025

Date of pronouncement:08.04.2026

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Pinto Prasad, age 41 years
S/o Virender Prasad
R/o H. no. E-1/343 Gali No. 8
4-Pusta Sonia Vihar Karwal Nagar,
Delhi
Through Brother Shanker Dayal, age
43 years.

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

Through: Mr. Santosh Kumar Mishra, Advocate.

vs

01.UT of J&K
Through Senior Superintendent of Police
ANTF, Jammu.

..... Respondent(s)

02. Station House Officer (SHO)
Police Station ANTF, Jammu.

Through: Mr. P. D.Singh, Dy. AG.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER
08.04.2026

- 01.** Petitioner has invoked Section 480 BNSS for his enlargement on bail in case FIR No. 7/2024 for offences under Sections 8/21/22/29 NDPS Act, after a similar plea came to be rejected by learned Special Judge (NDPS cases), Jammu, [“the trial Court”].
- 02.** As the prosecution story would unfurl, on 09.11.2024 at around 1230 hours, a team of Police Station, ANTF, Jammu, on the basis of source information went to Narwal Transport Yard, Jammu and spotted a person carrying a black coloured laptop bag. On questioning, he disclosed his name as Vishal. After written permission of Naib Tehsildar EMIC, Bahu, when black coloured laptop bag of said

Vishal Sharma was searched, it was found to contain 08 black coloured polythene bags, in which 02 polythene bags were taped with brown tapes. On opening the said packets, they were found to contain 4880 intoxicant sky blue coloured capsules of SPM-PRX. On weighment with the official weighing machines, the recovered capsules weighed 3.079 kgs.

03. The investigating agency, during investigation came to know that accused Vishal Sharma had received the consignment of capsules of SPM-PRX from the petitioner. The investigating agency received authenticated CDRs/CAFs along with decoded tower locations of mobile numbers of both the accused persons and analysis of which showed that they had the same tower location where the delivery of consignment had been done. The investigating officer recorded statements of co-accused Vishal Sharma and petitioner under Section 67 NDPS Act.
04. According to the investigating agency, offences under Sections 8/21/22/29 NDPS Act were proved against both accused Vishal Sharma and the petitioner.
05. The petitioner preferred an application for his enlargement on bail in the trial Court, which came to be dismissed, primarily on the ground that he was involved in a serious offence and rigour of Section 37 NDPS Act was applicable to the case.
06. The petitioner has taken an exception to the observations of learned trial Court *inter alia* on the grounds that nothing incriminating came

to be recovered from his conscious possession and he has been implicated in a false case on the basis of statement of co-accused Vishal Sharma, recorded under Section 67 NDPS Act, while he was in custody, which is inadmissible in evidence.

07. The plea has been opposed on the other side by the respondent *inter alia* on the grounds that there is sufficient material, in the shape of CDRs/CAFs, in addition to the statement of co-accused and confessional statement of the petitioner, under Section 67 NDPS Act, available on the record, against the petitioner and since Section 37 NDPS Act is attracted in the case, petitioner is not entitled to the liberty of bail.
08. Having heard learned counsels for the parties, I have gone through the record.
09. While learned counsel for the petitioner has reiterated the grounds urged in the memo of petition, Mr. P. D. Singh, learned Dy. AG has opposed the present application on the ground of rigor of Section 37 NDPS Act.
10. The courts while considering a bail plea, in cases of recovery of commercial quantity of contrabands in NDPS cases, are mandatorily required to return a finding, in the context of Section 37 of NDPS Act that accused is not guilty of any such offence.
11. Admitted facts of the case are that petitioner came to be implicated in the present case, solely on the basis of statement made by co-accused

Vishal Sharma, while he was in custody, that he had received the consignment from the petitioner.

12. A three Judge Bench of Hon'ble Supreme Court, in **Tofan Singh Vs. State of Tamil Nadu; (2021) 4 SCC 1**, has held that since the officers vested with the power under Section 53 of NDPS Act are "Police Officers", any confessional statement recorded by them under Section 67 NDPS Act will remain inadmissible under Section 25 of the Evidence Act and cannot be taken into consideration to convict an accused under the Act.

Relevant excerpt of the judgement, reads as below:

"158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provision of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2 That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

13. Relying upon the majority judgment in **Tofan Singh** (supra) Hon'ble Supreme Court in **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and Anr.; 2022 (1) RCR (Criminal) 762** though ruled that CDR details of an accused is an aspect to be examined during the trial, but refused to cancel bail of the accused, granted by the high Court on the ground that contraband was not recovered from their conscious possession.

Relevant excerpt of the judgment captured in paras 9 and 10 for the facility of reference has been extracted below:

"9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on

carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

*10. It has been held in clear terms in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1**, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”*

14. It is manifest from the afore-quoted enunciation of law by Hon'ble Supreme Court that an accused can be granted the concession of regular bail when he is sought to be implicated solely on the basis of the disclosure statement of the co-accused and there is no other corroborative evidence or substantial material available with the prosecution to connect him with the allegations of drug peddling.
15. In so far as CDRs/CAFs and tower locations are concerned, it may reveal that in or around the time of the occurrence that petitioner was in contact with the co-accused, from whose conscious possession, alleged

contraband came to be recovered. However, since there is no transcript of the conversations between the accused persons, call details per se would not be sufficient to establish that they had the common criminal intention for the drug peddling. In the absence of transcript of the conversations exchanged between co-accused persons, mere call details or call data records or mere contact of the petitioner with the co-accused cannot be considered to be a corroborative material to connect him with the commission of the offence.

16. Uncontroverted facts of the case are that contraband in the present case was recovered from the conscious possession of co-accused Vishal Sharma, who, during investigation, in his statement under Section 67 NDPS Act, while he was in custody, has stated that he had received the consignment from petitioner. Confessional statement of the petitioner under Section 67 NDPS Act was also recorded by the investigating agency, while he was in custody. As stated, Hon'ble Supreme Court in **Pallulabid Ahmad Arimutta** (supra) as held that CDR details of an accused is an aspect to be examined during the trial only.
17. Having regard to the aforesaid, present application is allowed and petitioner is directed to be released on bail on his furnishing a solvent surety bond to the tune of Rs. 50,000/- to the satisfaction of learned trial court and a bond of personal recognizance of the like amount to the satisfaction of the Superintendent of the concerned jail, subject, however to the following conditions that:

- i. he shall not jump over bail and tamper the prosecution evidence;
- ii. he shall not leave territorial jurisdiction of the trial court without prior permission;
- iii. he shall not commit an offence similar to the offence of which he is accused; and
- iv. he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Courts or to any police officer or tamper with evidence.

18. Disposed of.

Jammu
08.04.2026
Sushant

