

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

**Bail App 310/2025
CrIM(2132/2025)**

Date of Pronouncement: 06.03.2026

Date of uploading: 09.03.2026

SHANKAR AND ORS

...Petitioner/Appellant(s)

Through: Mr. Amit Sharma, Advocate

Vs.

**UNION TERRITORY OF JAMMU AND
KASHMIR TH SHO POLICE STATION
CHENANI UDHAMPUR**

...Respondent(s)

Through: Mr. Sumeet Bhatia, GA

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

ORDER
06.03.2026

1. The present application has been preferred by the three petitioners seeking their enlargement on bail in case FIR No. 45/2025 registered at Police Station Chenani under Sections 8/20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), arising out of an incident dated 26.04.2025. As per the prosecution case, on the said date at about 05:30 PM, the petitioners were travelling on a white coloured Apache motorcycle bearing registration No. PB02DG-9329. When they reached a Naka point established within the jurisdiction of Police Station Chenani, they were signalled to stop as they were proceeding from Udhampur towards Chenani. Upon conducting

search, 615 grams of charas-like substance wrapped in a polythene pouch was allegedly recovered from petitioner No. 1, whereas 395 grams of charas contained in a black polythene packet was recovered from petitioner No. 2. The contraband was seized and sealed separately and marked as Exhibits “A” and “B”. As the petitioners failed to account for the possession of the said substance, they were arrested on the spot. Their application for bail was declined by the Trial Court vide order dated 09.10.2025, which has led to the filing of the present petition. The petitioners claim that they have been falsely implicated and that the recoveries attributed to them are individual in nature and therefore do not attract the rigours of Section 37 of the NDPS Act. They further submit that investigation has been completed and the charge-sheet has already been filed.

2. The bail application has been opposed by the respondents on the ground that petitioner Nos. 1 and 2 are father and son, whereas petitioner No. 3 is the wife of petitioner No. 2, and all the three were travelling together on the same motorcycle. It is submitted that the prosecution has complied with all the safeguards prescribed under the NDPS Act and that the accused have already been formally charged. It is further contended that Call Detail Record (CDR) analysis shows that the petitioners were in constant touch with each other and that petitioner No. 1 was in frequent contact with co-accused Dhani Ram. According to the prosecution, bank records reveal financial transactions dated 22.04.2025 between petitioner No. 1 and the said co-accused, who is stated to be a habitual supplier of narcotic

substances and is involved in several criminal cases. These circumstances, according to the prosecution, indicate that the petitioners were acting in concert and shared a common intention to possess and deal in the contraband.

3. Learned counsel for the petitioners, however, contends that the issue of conscious possession and alleged conspiracy under Section 29 of the NDPS Act is essentially a matter for trial. It is argued that the recoveries were effected individually from petitioner Nos. 1 and 2 and that petitioner No. 3 was merely accompanying them. Reliance has been placed upon the judgment of the Supreme Court reported in *(2005) 7 SCC 550*, wherein it was observed that mere presence of accused persons together or their travelling in the same vehicle would not by itself establish criminal conspiracy or abetment under Section 29 of the NDPS Act. Reliance has also been placed upon the judgment of this Court in Bail Application No. 261/2024 titled *Abdul Hamid v. Union Territory of J&K and another*.

4. I have heard learned counsel for the parties and carefully perused the record.

5. In so far as petitioner No. 1 is concerned, the prosecution case is that he was found in possession of 615 grams of charas which he failed to account for. Apart from the recovery, the prosecution has placed reliance upon financial transactions between petitioner No. 1 and co-accused Dhani Ram, who is alleged to be the supplier of the contraband. Bank records showing transfer of money shortly before the incident have been cited as indicative of the procurement of the

contraband. These circumstances, when viewed collectively, prima facie lend support to the prosecution case that the contraband was not merely in casual possession but was procured with the intent of unlawful sale.

6. The law governing grant of bail in NDPS cases is now well settled. The Supreme Court in *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798, held that when the statutory conditions under Section 37 of the NDPS Act are attracted, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. The Court further observed that the satisfaction contemplated under Section 37 is not merely prima facie but requires the Court to record its satisfaction based on substantial grounds.
7. Similarly, in *State of Kerala v. Rajesh*, (2020) 12 SCC 122, the Supreme Court reiterated that the limitations imposed by Section 37 of the NDPS Act are in addition to the limitations under the Code of Criminal Procedure and that the Court must strictly adhere to the twin conditions prescribed therein. The Court observed that the expression “reasonable grounds” means something more than mere prima facie grounds and requires substantial probable cause for believing that the accused is not guilty.
8. It is also relevant to note that under Section 54 of the NDPS Act, once possession of contraband is established, a statutory presumption arises against the accused, which he is required to rebut during trial. In the present case, petitioner No. 1 has not been able to provide any

plausible explanation for the possession of the contraband allegedly recovered from him. Moreover, the alleged financial transactions with a known supplier further strengthen the prima facie case against him.

9. Although the quantity recovered from petitioner Nos. 1 and 2 individually may fall within the intermediate category, the surrounding circumstances cannot be ignored. Petitioner Nos. 1 and 2 are father and son and were travelling together when the contraband was recovered from their respective possession. In such circumstances, the prosecution has invoked Section 29 of the NDPS Act to allege criminal conspiracy. At this stage, the material collected during investigation, including the alleged financial transactions and the relationship between the accused, provides sufficient prima facie basis to infer that they may have been acting in concert.

10. The Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)*, (2023) **14 SCC 1**, while considering bail under the NDPS Act, observed that although the rigours of Section 37 are strict, the Court must also balance the fundamental right to personal liberty and examine whether the continued incarceration of the accused is justified in the facts of the case. However, the said judgment also clarifies that where the allegations are grave and supported by material collected during investigation, the Court would be justified in declining bail.

11. In the present case, the recovery of contraband from petitioner Nos. 1 and 2, the alleged financial transactions with a known supplier, and the fact that charges have already been framed by the Trial Court collectively indicate that the accusations against them are serious in

nature. The order framing charge has not been challenged, which implies that the Trial Court found sufficient material to form a prima facie opinion regarding their involvement. At this stage, therefore, this Court is not persuaded to record the satisfaction required under Section 37 of the NDPS Act that petitioner Nos. 1 and 2 are not guilty of the offence.

12. Consequently, the bail application insofar as it relates to petitioner Nos. 1 and 2 is held to be premature and is dismissed, while reserving liberty to them to approach this Court again after some material witnesses are examined during trial.

13. In so far as petitioner No. 3 is concerned, the situation stands on a different footing. Admittedly, no contraband has been recovered from her possession. Her implication in the present case is primarily based on the allegation that she was accompanying petitioner Nos. 1 and 2 and is related to them as the wife of petitioner No. 2 and daughter-in-law of petitioner No. 1. Mere relationship with co-accused or presence at the spot, without any recovery or overt act attributed to her, cannot by itself justify the inference that she shared the common intention of possessing the contraband. The prosecution has not pointed out any material to indicate her active participation in the alleged offence.

14. In these circumstances, this Court is of the considered view that the continued detention of petitioner No. 3 would not serve the ends of justice. Accordingly, she is held entitled to the concession of bail at this stage.

15. Petitioner No. 3 is, therefore, admitted to bail subject to the following conditions:-

- i. She shall furnish a personal bond in the sum of ₹1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court;
- ii. She shall appear before the Trial Court on each and every date of hearing and shall not leave the territorial jurisdiction of the Union Territory of Jammu & Kashmir without prior permission of the Trial Court;
- iii. She shall not indulge in any offence similar to the one for which she stands charged.

16. The petition, to the extent it relates to petitioner Nos. 1 and 2, is accordingly *dismissed*.

(SANJAY PARIHAR)
JUDGE

JAMMU:
06.03.2026
Akshil Dev

Whether the order is speaking? Yes
Whether the order is reportable? Yes