

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

**Bail App No.334/2025**

*Reserved on :* 05.06.2026  
*Date of pronouncement:* 06.06.2026  
*Date of uploading:* 06.06.2026

**Manish Kumar Sharma**

...Petitioner(s)

Through: Mr. P. S. Pawar, Advocate

**Vs**

**UT of J&K**

...Respondent(s)

Through: Mr. Pawan Dev Singh Dy. AG

**CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**ORDER**

1. The petitioner has invoked Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail in FIR No. 10/2022 dated 01.02.2022 registered at Police Station Nowabad, Jammu, for offences punishable under Sections 8/20/21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") after his application for similar relief came to be declined on 30.06.2025 by learned Special Judge, NDPS Cases, Jammu ["the trial Court", for short].

2. The prosecution case, in brief, is that on 01.02.2022 at about 10:15 A.M., a police patrol party of Police Station Nowabad noticed the petitioner standing near JMC Toilet Complex, Jewel Chowk, Jammu, carrying a green-coloured polythene bag. On noticing the police party, the petitioner allegedly attempted to flee, thereby arousing suspicion. He was apprehended and, upon search, was allegedly found in possession of 100 grams of ganja, 70 Diazepam

ampoules, 50 Promethazine ampoules and 25 Buprenorphine ampoules. Upon completion of investigation, challan was presented before the trial court on 21.04.2022. Charges were framed on 01.11.2022 and the trial commenced.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated and that material contradictions exist in the testimony of prosecution witnesses regarding the manner of arrest, place of seizure, handling of contraband and non association of independent witnesses despite recovery allegedly being effected from a busy public place. It is further submitted that petitioner has remained in custody since 01.02.2022 and has undergone incarceration for more than four years. The trial has not concluded despite of lapse of considerable time. It is urged that continued detention violates the petitioner's right to personal liberty under Article 21 of the Constitution of India. It is also submitted that petitioner has clean antecedents and is the sole bread earner of his family.

4. *Per contra*, learned counsel appearing for the respondent opposes the bail application, contending that recovery pertains to commercial quantity, thereby attracting the embargo under section 37 NDPS Act. It is submitted that petitioner has failed to satisfy the twin conditions under Section 37. It is further argued that the contradictions pointed out by the petitioner are matters for trial and cannot be examined at the stage of bail. It is also contended that the trial is progressing expeditiously and delay, if any, cannot override statutory restrictions under the NDPS Act.

5. Heard learned counsels for the parties and perused the record.

6. The principal question that arises for consideration is whether petitioner has succeeded in making out a case for grant of bail notwithstanding the restrictions imposed by Section 37 of the NDPS Act.

7. It is not in dispute that prosecution case pertains to the recovery of commercial quantity of contraband from the possession of the petitioner. Therefore, bail can be granted only if Court is satisfied that there are reasonable grounds for believing that accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

8. Learned counsel for the petitioner has taken this court through the testimonies of various prosecution witnesses to demonstrate inconsistencies regarding the recovery proceedings and compliance with statutory safeguards. However, at the stage of consideration of bail in cases governed by Section 37 of the NDPS Act, Court is not expected to undertake a meticulous appreciation of evidence or record findings touching upon the merits of the prosecution case. The contradictions highlighted by the petitioner, though relevant for the purpose of trial, cannot at this stage lead to a definite conclusion that there exist reasonable grounds for believing that petitioner is not guilty of the offences alleged.

9. The contention regarding non association of independent witnesses also does not, by itself, persuade this court to grant bail. The evidentiary value of official witnesses and effect of non-association of independent witnesses are matters to be assessed during the trial and cannot in the facts of the present case, be treated as sufficient to overcome the statutory embargo.

10. No doubt, right to speedy trial is a fundamental right of a person and no person can be deprived of his liberty except in accordance with the procedure

established by law under Article 21 of the Constitution of India. The fundamental right to a speedy trial and the presumption of innocence are crucial considerations in granting bail, however, it not an absolute or automatic ground and courts are obliged to consider the totality of circumstances, which caused delay in the conclusion of trial.

11. I am fortified in my opinion by **Dipak Shubhashchandra Mehta v. C.B.I. & Anr.; AIR 2012 SC 949** whereby Hon'ble Supreme Court while recognizing the right of an accused to be released on bail, in cases of delay in trial, has cautioned that the said principle cannot be mechanically applied to below: all cases. Relevant excerpt of the judgment captured in para-17 is reproduced

**“17. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. [Vide Babba vs. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar vs. State of U.P., (2000) 9 SCC 443.2]: (AIR 2000 SC 3406 But the same should not be applied to all cases mechanically.”**

16. A similar view has been taken in **State of Bihar and another v. Amit Kumar alias Bacha Rai; AIR 2017 SC 2487**, whereby the Apex Court cancelled the bail granted by the High Court on the ground of prolonged custody of the accused. Relevant observation made in para 9 of the judgment reads as below:

**“9. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts”**

17. An identical view has been expressed in **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another; AIR 2004 Supreme Court**

1866 whereby Hon“ble Supreme Court refused to release the accused on bail, who had already undergone a period of incarceration of 3½ years.

**“14. ....In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”**

18. In the aforesaid cases, Hon’ble Supreme Court has emphasized that prolonged custody does not automatically justify bail and courts must consider the seriousness of the offence and other surrounding circumstances.

19. Thus, it goes without saying that delay in trial by itself constitutes denial of justice and any such delay on the part of the trial Court or the prosecution amount to violative of Article 21 of the Constitution. However, if the trial Court record is carefully glanced over, what comes to the fore is that it is not the trial Court or the prosecution alone who can be held responsible to cause delay but the petitioner is equally responsible. A considerable period was consumed first by the petitioner to engage a lawyer and thereafter his counsel to file power of attorney and conclude the arguments on charge/discharge. Finally, charge could be framed by trial court on 20.03.2023. On several occasions, the prosecution witnesses did not appear despite service and pertinently trial court issued bailable or non bailable warrants of arrest to ensure the presence of prosecution witnesses. Pending trial, charge sheet also came to be transferred from the court of learned 2<sup>nd</sup> Additional Sessions Judge, Jammu to the newly created Special Court for the trial of NDPS cases. On one of the occasions, the investigating officer present in the trial court could not be examined due to the absence of learned defence counsel. All these

circumstances collectively contributed to cause delay in the conclusion of the trial.

**20.** Be that as it may, Mr. P. S. Pawar, learned counsel appearing for the petitioner has fairly admitted that on 30.06.2025 when application of the petitioner for bail came to be rejected by the trial court only one prosecution witness was examined and now all the prosecution witnesses except the Investigating officer have been examined by the trial court and trial is at the final stage.

**21.** No doubt, length of custody and likelihood of the trial delay can be key factors in granting bail to an accused regardless of the seriousness of the charge, but it is not an absolute right and Court has to take various factors into consideration including the role played by the accused and assistance rendered by him to ensure the speedy trial. Where an accused equally contributes in the procrastinated trial and shares the responsibility for delay, alongside the prosecution and the court system, by requesting unnecessary adjournments, frequent change of counsels and not appearing in the court on scheduled hearings for examination of the witnesses, present in the court, the plea of bail on the ground of protracted incarceration, is not available to him.

**22.** Having regard to the allegations against the petitioner, the nature of recovery attributed to him, the stage of trial and the limitations imposed by Section 37 of the NDPS Act, this Court is unable to record satisfaction that there are reasonable grounds for believing that he is not guilty of the offences alleged against him. Consequently, the twin conditions prescribed under Section 37 of the Act are not satisfied. Hon'ble Supreme Court has repeatedly emphasized that in cases involving commercial quantity, the limitations

contained in Section 37 are mandatory and cannot be diluted by applying ordinary principles governing the grant of bail. This court is, therefore, of the considered opinion that petitioner has failed to make out a case for grant of bail at this stage.

23. For the foregoing reasons, present bail application is found devoid of merit and is accordingly dismissed.

24. Nothing stated herein shall be construed as an expression of opinion on the merits of the case and learned trial Court shall decide the matter independently but with expedition, on the basis of the evidence adduced before it.

**(Rajesh Sekhri)**  
**Judge**

**Jammu**  
06.06.2026  
*Paramjeet*

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|--------------------------------------------|------------|
| Whether the judgment is speaking or not?   | <b>Yes</b> |
| Whether the judgment is reportable or not? | <b>Yes</b> |