

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

Bail App No. 337/2025

Reserved On: 29.05.2026

Pronounced On: 01.06.2026

Uploaded On: 01.06.2026

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

Mohd. Ashraf Dar, Age: 37 Years

S/O Mohd. Akram Dar

R/O H. No. 313, Nasirullah Pora,
Budgam, Kashmir.

... **Petitioner(s)**

Through: -

Ms Deepika Pushkar Nath, Advocate.

V/s

Union of India,

Through Intelligence Officer,
Narcotics Control Bureau (NCB),
Jammu Zonal Unit,
42-B/B, 2nd Extension, Gandhi Nagar,
Jammu-180004.

... **Respondent(s)**

Through: -

Mr Vishal Sharma, DSGI with
Mr Karan Sharma, CGSC.

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(JUDGMENT)

01. The Petitioner has invoked the jurisdiction of this Court under Section 483 of the Bharatiya Nagarik Suraksha Sanhita [BNSS] seeking his enlargement on bail in connection with Crime No. 23/2022, NCB, Jammu under Sections 8/22/27-A/29 of the Narcotic Drugs and Psychotropic Substances Act [NDPS Act].

02. A similar bail application was also preferred by the Petitioner before the Court of learned Principal Sessions Judge, Samba (Special Judge under NDPS Act) [“the Trial Court”], but same was dismissed vide Order dated 10 July 2025.

03. The Petitioner is seeking bail on the ground that there is no material connecting him with the commission of alleged offences, but the Trial Court, without looking into this aspect of the matter, erroneously dismissed his bail application in a mechanical manner. It is also stated that the Prosecution Witnesses, examined so far, did not depose anything incriminating against the Petitioner which would connect him with the commission of the alleged offences. According to Petitioner, there is ample material to the satisfaction of the Court for believing that the Petitioner is not guilty of the alleged offences and further that he is not likely to commit any offence while on bail, therefore, he deserves to be released on bail. It is also submitted that the Petitioner was arrested on 11 December 2022, therefore, in view of long incarceration, he is also entitled to the concession of bail.

04. In addition, the learned Counsel appearing for the Petitioner has vehemently argued that, except for confessional statements recorded under Section 67 of the NDPS Act, there is no material, worth the name, connecting the Petitioner with the commission of alleged offences, therefore, the Trial Court has fallen in error of law while rejecting his bail.

05. On the other hand, though the Respondent had failed to file Reply/ Objections to the Petition, but Mr Vishal Sharma, learned DSGI, had drawn the attention of the Court to the material collected during investigation and went onto submit that the Petitioner was part of the conspiracy hatched by the co-accused and, in this regard, ample material is collected by the Investigating Officer, apart from the statements of the witnesses recorded under Section 67 of the NDPS Act, therefore, prays for dismissal of the Petition.

06. Heard learned Counsels for the parties and perused the record.

07. The facts necessary for the adjudication of the Petition on hand are that on 09 December 2022, at about 1100 hours, NCB, Jammu received a secret information that a huge quantity of *Codeine* based Cough Syrup and *Spasmo Proxyvon Plus* capsules containing *Tramadol* have been dispatched for delivery to Srinagar by a truck bearing registration No. JK04F-7801 through a Courier Company, namely, Jupiter Road Lines Transport, Delhi. The information further divulged that the said truck carrying the narcotic consignment would reach near *Chichi Mata Mandir* in between 1600 to 1800 hours on 09 December 2022. Accordingly, the NCB team had reached at *Chichi Mata Mandir* and, on noticing the movement of the truck bearing registration No. JK04F-7801, it was signaled to stop by the NCB, Jammu. On inquiry, the driver of the truck disclosed his name as Ajaz Mattoo and conductor had disclosed his identity as Rauf Ahmad

Magray. During the search of the truck, four cartons of *Spasmo Proxyvon Plus* capsules and four cartons of *Codeine* based cough syrup had been recovered which were dispatched vide Bill No. 22574.

08. During investigation, it was found that on 10 December 2022, Mohd. Ashraf Dar (Petitioner) and Riyaz Ahmed Dar have come to Jupiter Road Lines Transport to receive the seized 750 bottles of *Codeine* based cough syrup and 45936 capsules of *Spasmo Proxyvon Plus* containing *Tramadol*. Therefore, it has been found that the Petitioner was one of the receivers of the seized contraband.

09. The important material collected during investigation connecting the Petitioner with the larger conspiracy of trafficking in narcotic substances was in the shape of call details of a phone number, i.e., 9103582733, issued in the name of Mst. Shaista Akhtar, wife of the Petitioner, and the Petitioner has been using it to camouflage and to run a racket of drug syndicate. Further, money transactions were also found between the Petitioner and the co-accused, so as to procure the narcotics. In this regard, sufficient documentary material has been collected during investigation.

10. Be it further noted that, by now, the Prosecution has examined two witnesses, who have *prima facie* deposed in tune with the Prosecution case.

11. Indisputably, the Petitioner was sent up for trial for allegedly trafficking in huge commercial quantity of narcotic substances and financing the illicit trafficking of the narcotic drugs under a well-knit conspiracy hatched by the accused persons and the Trial Court, after drawing *prima facie* satisfaction, has drawn up formal charges against the Petitioner for the commission of offences punishable under Sections 8/22/27-A/29 of the NDPS Act. It is equally noteworthy that by now, out of the 16 listed witnesses, the Prosecution has examined 02 witnesses.

12. In '**Narcotics Control Bureau V. Kashif, 2025 (2) Supreme 268**', the Hon'ble Supreme Court, while dealing with the compliance of the mandate of Section 37 of the NDPS Act, observed that, where the offence is punishable with minimum sentence of 10 years, the accused shall generally be not released on bail and, in this regard, '**negation of bail is the rule and its grant is an exception**'. It has been further held that, 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. However, the recording of finding, as mandated in Section 37, is the *sine qua non* for granting bail to the accused involved in the offence under the said Act. Similar view has been taken by the Hon'ble Supreme Court in '**State of Meghalaya V. Lalrintluanga Sailo & Anr., 2024 (6) Supreme 568**'.

13. The Hon'ble Supreme Court in '**Union of India V. Vigin K. Varghese, 2025 SCC Online (SC) 2440**', observed as under:

“17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii), which would disentitle the discretionary relief and grant of bail, must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of subjective control and antecedent involvement, risks trenching upon appreciation of evidence, which would be in the domain of trial court at first instance.”

From the above-stated dictum of law, it is pellucid that Section 37 of the NDPS Act is mandatory and when same is pitted against the plea of prolonged incarceration and likely delay of the trial, the conditions contained in Section 37 of the NDPS Act have the precedence.

14. Now, turning to the case on hand, the Petitioner did not specifically indicate as to how the evidence recorded so far does not connect him with the alleged commission of offences. Therefore, mere wholesale assertion is not sufficient to rebut the presumption arrived by the Trial Court, while framing the charges.

15. It is important to note that in ‘**Narcotics Bureau V. Mohit Agarwal, (2022) 18 SCC 374**’, a three-judge Bench of the Hon’ble Supreme Court held that the length of the period of custody or that charge sheet had been filed or even that the trial has not commenced, by themselves, are not considerations that can be treated as persuasive grounds to grant bail under Section 37 of the NDPS Act.

16. In '**State of Karnataka V. Shri Darshan, (2025) SCC Online SC 1702**', which is a *locus classicus* on the subject, the Hon'ble Supreme Court observed that, while considering the bail, only the *prima facie* assessment of the material is warranted and the Court cannot conduct a mini-trial or record conclusion that can influence the outcome of the trial. In **Shri Darshan's case (supra)**, while citing the judgment passed in '**Ash Mohammad V. Shiv Raj Singh @ Lalla Bahu & Anr., (2012) 9 SCC 446**', it has been, *inter alia*, held that the period of custody, while relevant, must be weighed against the totality of circumstances, including the nature of crime and criminal antecedents. It was further held that in serious offenses, the gravity of the offense and its impact on society must weigh heavily with the Court and such cases must have to be considered with greater care and circumspection.

17. In view of above, it is made abundantly clear that in heinous crimes punishable with minimum sentence of 10 years, the accused shall generally be not released on bail, and thus, he cannot seek bail as a matter of right merely on length of incarceration, unless countervailing circumstances have been shown to the satisfaction of the Court.

18. The Petitioner, in the case on hand, except making wholesale assertions, did not put forth any circumstance, much less from the evidence recorded so far, to show that the Prosecution Witnesses did not support the allegations on the basis of which the charges have been framed against the

Petitioner or that the evidence is of such fragile nature that imminently leads to the presumption of innocence in favor of the Petitioner.

19. In view of the material collected during investigation and the evidence of the witnesses recorded so far, the Petitioner has not been able to point out the existence of any fact or circumstance that is sufficient to justify recording of a finding that he is not guilty of the offences charged and, hence, the rigors of Section 37 of the NDPS Act are fully applicable, therefore, disentitling the Petitioner to the benevolence of bail at this stage.

20. For the foregoing reasons, the instant bail application is **dismissed**. However, keeping in view the period of incarceration of the Petitioner, the Trial Court shall make an endeavor to conclude the trial with utmost promptitude. It is made clear that the observations made or findings recorded hereinabove shall not be construed as an expression of opinion with regard to the merits of the trial and that same shall only be confined to the disposal of the instant Petition.

21. A copy of this Judgment be forwarded to the Trial Court for information and compliance.

(SHAHZAD AZEEM)
JUDGE

JAMMU
01 June, 2026
"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.