

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

Reserved on : 14.05.2026  
Pronounced on : 21.05.2026  
Uploaded on : 21.05.2026

Bail App No.345/2025

Vicky S/o Late Mukesh Kumar  
R/o C-43/291/1 T-HUTS, Faiz Road, Karol Bagh,  
Central Delhi, A/p undertrial at District Jail Ambphalla,  
Jammu in Crime No.23/2022 NCB, Jammu,  
Offences under Sections 8/22/29 NDPS Act, age 33 yeas .... Petitioner(s)

Through: Mr. Ved Bhushan Gupta with  
Mr. Rahul Aggarwal, Advocate

**Versus**

Union of India though Narcotic Control Bureau,  
Jammu Zonal Unit, Jammu .....Respondent(s)

Through: Mr. Vishal Sharma, DSGI with  
Mr. Eishaan Dadhichi, CGSC &  
Mr. Sumant Sudan, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**JUDGMENT**

1. Through the medium of instant petition, petitioner, who is facing criminal trial in Crime No.23/2022, titled NCB v. Mohd. Ashraf Dar and others for offences under Sections 8, 22, 29, NDPS Act, pending before the Court of learned Principal Sessions Judge, Samba (Special Judge under NDPS Act) (hereinafter to be referred as the “trial Court”) is seeking his release on bail.
2. The petitioner is accused in Crime No.23/2022 registered at Narcotic Control Bureau, Jammu for commission of offence punishable under Sections 8/22/29 of the Narcotic Drugs and Psychotropic Substances

Act (for short, “NDPS Act”) which, after investigation, is pending trial before the Trial Court. Initially the petitioner moved a bail application before the Trial Court seeking his release from the judicial custody pleading therein that the petitioner has been falsely implicated in the case, investigation is complete and final report presented and that there is no likelihood of the completion of trial in near future.

3. The application for bail filed by the petitioner was contested by the prosecution and the same was dismissed by the Trial Court vide its order dated 10.07.2025. As is apparent from order dated 07.07.2025 passed by the Trial Court, the petitioner was held not entitled to release on bail on the ground that since contraband recovered from the accused persons is of commercial quantity, rigours of Section 37 of NDPS Act would apply; there is presumption of law under Section 35 read with Section 54 of NDPS Act that accused is presumed to have committed the offences as indicated in the complaint and was in a culpable mental state.
4. Aggrieved, the petitioner has moved this Court for his release on bail in the aforesaid crime/challan on the ground that he has neither committed any offence nor participated in the commission of the crime; no direct evidence has been brought against the petitioner and nothing incriminating against the petitioner has been proved; there is every likelihood that trial may take couple of more years, as such continued incarceration of the petitioner would be in violation of his fundamental right guaranteed under Article 21 of the Constitution of India.

5. Before advertng to the grounds on which the petitioner seeks concession of bail, it would be appropriate to have the prosecution version. As per the prosecution, a secret information was received by Rakesh Kumar on 09.12.2022, that huge quantity of codeine based cough syrup and spasmo proxyvon plus capsules containing tramadol, loaded from Jupiter Road Lines Transport, a courier company from Sadar Thana Chowk Delhi in a truck No.JK024F-7801, is coming to Srinagar via Samba and may reach Chichi Mata Mandir Samba between 1600 hrs to 1800 hrs on 09.12.2022. On receipt of the information, direction was issued for constitution of NCB team to carry out operation and Vijay Kumar Intelligence collected requisite documents for conducting search and seizure proceedings. On noticing the truck No.JK04F-7801, driver was asked to stop and NCB officials introduced himself and informed about the information. The driver of the truck disclosed his name as Ajaj Mattoo and conductor as Rauf Ahmad Magray, bills and bilties were checked, which were in the name of M/s Jupiter Road Lines and one bill was found in the name of Showkar Ahmad Dar having eight (8) bundles of cosmetic goods. During search eight cartoons of herbal oil, herbal mehandi oil and four cartons of sapmso proxyvon plus capsules and four cartoons of codeine based cough syrup were found.
6. On enquiry, driver and conductor could not provide any valid document and bill about the restricted items. Contraband was seized after completing requisite formalities. Notice under Section 67 NDPS Act was issued to driver and conductor. In their statements, they

stated that they have no information about the seized narcotics. During investigation, it was surfaced that on 10.11.2022, Mohd Ashraf Dar and Riyaz Ahmed Dar came to Jupiter Road Lines Transport Nagar, Srinagar for receiving seized contraband. In his statement, Mohd Ashraf Dar deposed that contraband was sent by one Wasim from Delhi and that Riyaz Ahmed and Mohd. Ashraf Dar were to collect the same. In his statement, Riyaz Ahmed Dar stated that contraband was sent by one Wasim and Vicky through Jupiter Road Lines to Srinagar for them, Ashraf Dar came with him for collection of consignment of restricted medicines. He further stated that they purchased Spasmo Proxyvon strips and codeine based cough syrup from Wasim. They were arrested and the seized narcotic was sent to CRCL for chemical examination. All the accused were arrested on different dates and complaint vide Crime No.23/2022 for the commission of offences under Section 8/22/27-A/29 NDPS Act came to be filed and is pending trial before the trial Court. The allegation against the petitioner is that he used to prepare fake bills of herbal medicines. Charges stand framed against the petitioner on 21.11.2024.

7. Perusal of the record received from the trial Court reveals that only two out of sixteen prosecution witnesses have been examined so far before the trial Court.
8. The application is resisted by the respondent, who in its objections has stated that the petitioner being found involved in commission of offences under Section 8/22/27/29 NDPS Act, does not deserve concession of bail. It is stated that after hearing both the parties on

charge and considering the material and evidence collected during investigation, the trial Court has prima facie found the offences under Section 8/22/27/29 NPDS Act established against the petitioner and accordingly, charged him vide order dated 21.11.2024. It is further stated that the trial is progressing in accordance with law without any deliberate delay attributable to the respondent/NCB.

9. Learned counsel appearing for the petitioner has reiterated the submissions, which he made in support of his bail application before the Trial Court. He contends that the petitioner has neither committed any offence nor participated in the commission of any crime and he has been falsely implicated solely on the basis of statement of co-accused made under Section 67 NDPS Act, which is inadmissible evidence; the prosecution has failed to prove anything incriminating against the petitioner; grant of bail is the rule and its refusal is an exception; there is likelihood that trial may take couple of years, as such, continued incarceration of the petitioner in jail would be in violation of his fundamental right guaranteed under Article 21 of the Constitution.
10. Learned counsel for the respondent has contested the bail application on the ground that offence for which the petitioner has been charged is very heinous and the trial is progressing in accordance with law and without any deliberate delay attributable to the respondent/NCB. Learned counsel appearing for the respondent would argue that material witnesses are yet to be examined, therefore, enlarging the petitioner on bail at this stage would have adverse affect on the fair

trial in the case. Learned counsel further argues that having regard to the fact that the seized contraband is of commercial quantity, rigors of Section 37 of the Act would apply and unless the Court is satisfied that there are reasonable grounds to believe that the petitioner is not guilty of the offence and that he is not likely to commit any offence while on bail, the bail to the petitioner cannot be granted. It is further stated that if the petitioner is admitted to bail, there is every apprehension of petitioner's misusing the concession of bail, trying to win over the prosecution witnesses and that other likeminded people will be encouraged and may repeat the same offence in future.

11. Heard learned counsel for the parties and perused the material available on record.
12. It is well settled that in cases of recovery of commercial quantity of contraband, the Courts are necessarily required to record a finding with regard to Section 37 of NDPS Act that there are grounds to believe that the accused is not guilty of any such offence.
13. Indisputably, the petitioner came to be implicated in the instant case solely on the basis of statement made by a co-accused-Mohd. Ashraf Dar, while he was in custody. In **Tofan Singh v. State of Tamil, Nadu (2021) 4 SCC 1**, the Supreme Court has held that since the officers vested with the power under Section 53 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 extract of the judgment is set out below:

14. Relying upon Toofan Singh (supra), Supreme Court in the case of State by (NCB) **Bengaluru v. Pallulabid Ahmad Arimutta and another**, though held that CDR details of an accused is an aspect to be considered during trial but refused to cancel bail of the accused granted by the High Court on the ground that the contraband was not recovered from their conscious possession. Relevant portion of the judgment reads thus:
15. From the above quoted judicial pronouncements, it becomes crystal clear that an accused can be granted bail when he is sought to be implicated solely on the basis of disclosure statement of the co-accused and there is no corroborative evidence or sufficient material with the prosecution to connect him with the commission of crime punishable under NDPS Act.
16. In the absence of transcript of conversation between the accused persons, CDRs *per se* may not be sufficient to establish common intention of the accused persons to commit the crime of drug pedalling.
17. Admitted facts are that the banned drug was recovered from the conscious possession of co-accused Ajaj Mattoo and Rauf Ahmad Magray, however, the petitioner was implicated in the case on the basis of statement made by co-accused Mohd. Ashraf Dar under Section 67 NDPS Act, while he was in custody. Confessional statement of the petitioner, under Section 67 NDPS Act, was also

recorded, while he was in custody. Apart from this, petitioner along with other co-accused was charged on 21.11.2024 and perusal of the record shows that only two witnesses have been examined so far, therefore, there is no likelihood of conclusion of trial in near future. On that account also, continued incarceration of the petitioner is uncalled for.

18. For all what has been said above, this application is allowed and the petitioner is directed to be released from custody forthwith subject following conditions:

- i) that he shall furnish a surety bond to the tune of Rs.1,00,000/- to the satisfaction of the trial Court and a personal bond of the like amount to the satisfaction of the superintendent of the concerned jail;
- ii) He shall not jump over the bail and temper with the prosecution evidence in any manner directly or indirectly;
- iii) He shall appear before the trial Court on each and every date of hearing, unless exempted by the trial Court.
- iv) He shall not commit similar offence while on bail; and
- v) 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 temper with the evidence.

**(Moksha Khajuria Kazmi)**  
**Judge**

**JAMMU**  
21.05.2026  
Vinod, Secy

Whether order is reportable: No