

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 364/2025

Date of pronouncement: 27.02.2026

Date of uploading: 02.03.2026

Angrez Singh S/o Joginder Singh
R/o Kale Tehsil Patti Taran Taran,
Punjab
Through Son
Manpreet Singh

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

Through: Mr. Idrees Saleem Dar, Advocate

vs

UT of J&K th. Police Station ANTF, Jammu

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

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

ORDER

27.02.2026

1. The petitioner seeks enlargement on bail in FIR No. 26/2020 registered under Sections 8/20/29 of the NDPS Act, pending before the Court of learned Special Judge (NDPS Cases), Jammu. The learned Trial Court, vide order dated 09.07.2025, declined bail in view of recovery of 32 kilograms of charas, a commercial quantity, holding that the rigours of Section 37 of the NDPS Act were attracted and that the petitioner failed to satisfy the twin conditions mandated therein.
2. The petitioner was arrested on 14.07.2020. The charge-sheet was filed on 05.02.2021 and charges were framed on 24.08.2021. As per the record summoned from the Trial Court, out of 23 prosecution witnesses, 15 have already been examined. The petitioner has remained in custody for more than five years and contends that such prolonged incarceration amounts to

violation of his fundamental right under Article 21 of the Constitution of India.

3. The principal plank of the petitioner's argument rests on delay in conclusion of trial. It is urged that incarceration for over five years, without conclusion of trial, constitutes undue delay warranting relaxation of Section 37 of the NDPS Act. Reliance has been placed upon the decisions of the Hon'ble Supreme Court in "*Mohd Muslim @ Hussain v. State (NCT of Delhi)*" D.O.D 28.3.2023. "*Dheeraj Kumar Shukla v. State of Uttar Pradesh*", D.O.D 25.01.2023 and "*Supreme Court Legal Aid Committee v. Union of India*", 1994 AIR SCW 5115 wherein it has been held that prolonged incarceration and stagnation of trial may justify grant of bail notwithstanding statutory restrictions.
4. There can be no cavil with the proposition that the right to speedy trial is an integral facet of Article 21. The constitutional mandate requires that criminal proceedings be concluded within a reasonable time. The NDPS Act, though stringent in nature, cannot be applied in a manner that renders the guarantee of personal liberty illusory. However, the question whether delay is such as to warrant bail must depend upon the facts and circumstances of each case.
5. In *Mohd Muslim* (supra), the Hon'ble Supreme Court found that the accused had undergone incarceration for a considerable period and the trial had not progressed meaningfully. The Court emphasized that mechanical application of Section 37 cannot override constitutional protections. Similarly, in *Dheeraj Kumar Shukla* (supra), the trial had not commenced

despite lapse of significant time, which weighed with the Court in granting bail.

6. In the present case, however, the factual position stands on a different footing. The charge-sheet was filed within a reasonable period after arrest, notwithstanding the disruptions caused by the COVID-19 pandemic. Charges were framed in August 2021. Thereafter, the prosecution evidence has been proceeding. Fifteen out of twenty-three witnesses have already been examined. The record does not reflect prolonged adjournments attributable to the prosecution. Nor has the petitioner been able to point out any deliberate inaction or laxity on the part of the Trial Court.
7. It is also relevant to notice that during the pandemic period, normal functioning of courts across the country stood substantially curtailed. The initial delay, therefore, cannot be viewed in isolation or attributed to prosecutorial negligence. Once regular functioning resumed, the Trial Court appears to have proceeded with the matter on a steady basis.
8. The constitution of a dedicated Special NDPS Court at Jammu and transfer of the present case thereto further indicates administrative measures aimed at expeditious disposal of such matters. The progress already achieved, examination of majority of prosecution witnesses demonstrates that the trial has reached an advanced stage and is not languishing indefinitely.
9. The minimum punishment prescribed for an offence involving commercial quantity under Section 20(b)(ii)(C) of the NDPS Act is rigorous imprisonment for a term which shall not be less than ten years, extendable up to twenty years, besides fine. The petitioner is stated to have undergone

custody for a period approximating half of the minimum prescribed sentence. Undoubtedly, prolonged incarceration pending trial is a relevant consideration; however, the same cannot be examined in isolation, particularly in prosecutions governed by the rigours of Section 37 of the NDPS Act.

10. Learned counsel has invoked Section 436-A of the Code of Criminal Procedure, contending that the petitioner is entitled to release on bail, having remained in custody for a substantial period. It is true that Section 436-A contemplates release of an undertrial who has undergone detention extending to one-half of the maximum period of imprisonment specified for the offence. In the present case, however, the offence alleged carries a maximum punishment of twenty years. Measured against that statutory ceiling, the petitioner has not completed one-half of the maximum term so as to attract the statutory mandate of Section 436-A. Even otherwise, the said provision does not operate as an absolute command in cases where special enactments impose additional conditions for grant of bail.

11. The determinative consideration, therefore, is whether the trial has suffered inordinate delay or whether its conclusion appears uncertain within a reasonable timeframe. The record, as it stands, does not disclose any such exceptional circumstance. There is no material to indicate that the prosecution has been remiss or that the proceedings have stagnated without justifiable cause. In the absence of demonstrable undue delay, mere passage of time or completion of a substantial fraction of the minimum sentence cannot, by itself, dilute the statutory embargo contained in Section 37 so the

plea predicated upon Section 436-A Cr.P.C. does not advance the petitioner's case in the facts and circumstances obtaining herein.

12. The embargo under Section 37, as interpreted by the Hon'ble Supreme Court in "*Narcotics Control Bureau v. Mohit Aggarwal*" AIR 2022 SC 3444, requires the Court to be satisfied that there are reasonable grounds for believing that the accused is not guilty and that he is unlikely to commit any offence while on bail. The petitioner has not been able to satisfy these twin conditions. The prosecution evidence recorded thus far prima facie supports the case against him.

13. In balancing the constitutional mandate of speedy trial with the legislative intent underlying Section 37, this Court is required to adopt a calibrated approach. Where trial is stagnant and incarceration approaches or exceeds a substantial portion of the prescribed sentence, constitutional considerations may override statutory limitations. However, where the trial is progressing and nearing conclusion, the mere passage of time, though significant, may not by itself justify enlargement on bail.

14. In the facts of the present case, the delay cannot be characterized as undue or attributable to systemic apathy. Rather, the proceedings appear to be advancing in a structured manner. The petitioner has not demonstrated that the trial is likely to remain pending for an indefinite or unreasonable duration.

15. For the aforesaid reasons, this Court is of the considered view that the plea of delay, though substantial, does not in the present factual matrix

constitute a ground sufficient to dilute the statutory embargo under Section 37 of the NDPS Act.

16. Consequently, the bail application is *dismissed*. Nevertheless, considering the period of custody already undergone, the learned Trial Court is directed to accord priority to the present case and make earnest endeavour to conclude the trial expeditiously, preferably within a fixed timeframe, subject to cooperation of the parties.

(SANJAY PARIHAR)
JUDGE

Jammu
27.02.2026
Vishal Sharma



Whether the order is reportable? Yes

Whether the order is speaking? Yes