

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

Reserved on : 07.05.2026
Pronounced on : 18.05.2026
Uploaded on : .05.2026

Bail App No.373/2025

Imtiyaz Ahmed Khan, Aghed 32 years
Son of Abdul Rahim,
R/o Village Masjid Mathhumoo, Cheerpora, District Anantnag
Presently lodged in District Jail Amphalla, Jammu Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Vishal Mahajan, Advocate

Versus

1. Narcotic Control Bureau,
Jammu through its Intelligence Officer.
2. Superintendent, District Jail, Amphalla, Jammu
.....Respondent(s)

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

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. Through the medium of instant petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), petitioner, who is facing trial in criminal challan titled NCB v. Imtiyaz Ahmed Khan and others, arising out of Crime No.17/2021 for offences under Sections 8, 20, 29, 60 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.17/2021 registered at Narcotic Control Bureau, Jammu for commission of offence punishable under Sections 8/20/29 and 60 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 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 probability 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 04.11.2025. As is apparent from order dated 04.11.2025 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 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 FIR/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, on 10.12.2021 at 1800 hrs an information was received from reliable source that two persons namely, Muddasar Ahmad Magray S/o Manjur Ahmad Magray R/o Anantnag and petitioner herein are carrying huge quantity of narcotics drugs i.e. Charas in truck bearing registration No.JK03D-7377 while coming from Srinagar via Dhar road (Mansar Morh) in between 0700 to 0900 hrs on 11.12.2021 and the contraband was to be delivered at Nasik, Maharashtra. Upon receiving the information, Superintendent, NCB discussed the matter with Intelligence Officer and office order came to be issued to conduct the operation. The NCB team, on arrival at Mansar Morh, Samba looked for any person to be an independent witness but due to early morning, there was no person present on spot at that time. On noticing the movement of Truck bearing registration No.JK03D-7377, driver of the said truck was signalled to stop and park aside the road. Two persons were found sitting in the cabin of the truck. The Intelligence Officer introduced himself and the whole NCB team, informed the persons found in the truck about the information received regarding smuggling of charas. On being asked their identity, driver disclosed

his name as Mudassir Ahamad Magray S/o Manzoor Ahmad Magray R/o Village Chowgam, P.O. Chittergul, P.S. Utusoo, Tehsil Shangas District Anantnag (J&K) and the other person sitting in the cabin disclosed his identity as Imtiyaz Ahmad Khan S/o Abdul Rahim Khan, Village Mathmoo Cheerpora, P.O. Dithu, P.S. Utrusoo, Teshil Shangas District Anantnag (J&K).

6. During search, NCB team recovered six packets wrapped with brown coloured adhesive tape from the driver's back seat. On questioning about the content of the packets, both accused replied that all six packets contain charas. The recovered material was tested with narcotics drug detection kit, which gave positive result for charas. Total weight of the contraband recovered from the accused, including packing material, was found to be 5.800 kg and the net weight of the contraband was found to be 5.600 kgs. After completing all the formalities, both the accused were taken to NCB Office, Gandhi Nagar on 11/12 December, 2021, for enquiry/statement in connection with seizure of 5.600 kg charas. The petitioner herein, in his statement had disclosed that the seized charas was received from one Sabir R/o Kashmir and same was to be handed over to someone in Nashik (Maharashtra). The petitioner also disclosed mobile number of Sabir. In his statement the petitioner had stated that they had to get Rs.75,000/- for delivering the consignment. Both the accused were produced before the Court of learned Principal Sessions Judge, Samba along with case properties for sampling of seized drugs. The sample was sent to the Central

Revenues Control Laboratory, New Delhi for chemical examination. The chemical analysis report of the samples received from CRCL, New Delhi indicated positive result for charas. After concluding the investigation, complaint under Section 8/20/29 & 60 of NDPS Act (as amended) and under Section 463, 420 IPC came to be filed before the trial Court, which is pending trial. The petitioner was charged on 18.05.2024. It is informed to this Court that six out of ten prosecution witnesses have been examined before the trial Court and the remaining four witnesses are the material witnesses.

7. The application is resisted by the respondents, who in their objections have stated that the petitioner being found in possession of commercial quantity of contraband, 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 8/20/29/67 NPDS Act established against the petitioner and accordingly, charged him vide order dated 18.05.2024. It is further stated that the trial is progressing in accordance with law without any deliberate delay attributable to the respondent/NCB.
8. Learned senior 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; the prosecution has failed to prove anything incriminating against the petitioner; mandatory

procedure prescribed under NDPS Act has not been followed properly; 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.

9. 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, without any deliberate delay attributable to the respondents/NCB. Learned counsel appearing for the respondents would argue that six out of ten prosecution witnesses stood examined and only four witnesses, who, according to the learned counsel, are material witnesses, remain 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, rigours of Section 37 of the Act would apply and unless the Court is satisfied that there are reasonable grounds for believing 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 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.

10. Heard learned counsel for the parties and perused the material available on record.
11. A commercial quantity of contraband weighing 5.600 kgs was recovered from the possession of the petitioner and co-accused Mudasar Ahmad Magray, which they were found transporting from Srinagar to be delivered at Nasik (Maharashtra). The report of the chemical analysis conducted on the samples taken out of the contraband, indicates positive result for charas. Mudassar Ahmad Magray, who is co-accused, in his statement has stated that he was under the employment of the petitioner for driving the truck bearing Registration No.JK03D-7377 and was being paid Rs.10,000/- per month, to which there is no denial by the petitioner.
12. The Trial Court has taken note of all these aspects and has rightly come to the conclusion that the petitioner had not been able to make out a case where the Court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and that he is not likely to commit any offence while on bail.
13. There is no denial to the fact that the contraband item recovered represents commercial quantity, therefore, while considering the bail application, the Court has to keep in mind the rigours engrafted in Section 37 of the NDPS Act.
14. I am not in agreement with the learned counsel for the petitioner that in a case of prolonged incarceration rigours of Section 37 NDPS can be overlooked for the reason that the charges against the petitioners and other accused in the case were framed on 18th April, 2024 and as

of now six witnesses out of the ten stood examined by the prosecution, therefore, it can be said that the trial has progressed substantially and only four prosecution witnesses are left to be examined. A three-Judge Bench of Supreme Court in the case of **NCB v. Mohit Aggarwal, (2022) 18 SCC 374**, has held that delay in trial or prolonged incarceration is not, by itself, a sufficient ground for bail. The relevant extract of the judgment is set out below:-

“In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

15. The Supreme Court in the case of **State of Punjab v. Sukhwinder Singh @ Gora, 2026 INSC 411**, has held that in matters involving recovery of contraband in commercial quantity, twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation. Relevant extract of the judgment reads thus:

“It is well-settled that in matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial. The provision casts upon the Court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there

exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a mandatory pre-condition, the non-observance of which vitiates the grant of bail. This Court, in *Narcotics Control Bureau v. Kashif*, has held in no uncertain terms that the recording of satisfaction on the twin conditions under Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. The same view stands reiterated in *State of Meghalaya v. Lalrintluanga Sailo and Another*.”

16. The expression “reasonable ground” came up for discussion before the Supreme Court in “**State of Kerala and others Vs. Rajesh and others**” (2020) 12 SCC 122 , wherein it has been observed as under:

“The expression ”reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

17. Recently, in **Rajadurai v. State of Tamil Nadu (SLP(Cr.) No.4729/2026** has granted bail to an accused ignoring the restrictions imposed by Section 37 of NDPS Act on the ground of long

incarceration. In that case it has been noticed by the Supreme Court that although charge has been framed yet till date not a single witness has been examined. However, this is not so in the case of petitioner, where six out of ten witnesses stood examined and only four witnesses are left to be examined.

18. The minor contradictions pointed out by the learned Senior counsel, appearing on behalf of the petitioner, in the statements of the prosecution witnesses cannot be considered by this Court in these proceedings. The petitioner may raise this issue before the trial in his defence.
19. The material witnesses in the present case are yet to be examined and their testimony is crucial for arriving at a just conclusion. At this stage, it cannot be believed with certainty that the petitioner is not guilty of the charged offence or that he would refrain from committing any offence while on bail. The allegations against the petitioner are serious in nature and the evidence to be adduced by the remaining witnesses may have a substantial bearing on the outcome of the trial. Therefore, the grant of bail at this juncture may adversely affect the fair conduct of the proceedings.
20. Furthermore, the trial has already progressed substantially and only four witnesses remain to be examined. In such circumstances, this Court does not find any compelling or good ground to enlarge the petitioner on bail. Since the prosecution evidence is nearing completion, it would be appropriate to allow the trial to conclude

expeditiously rather than to interrupting the process by granting bail at this advanced stage of the proceedings.

20. This application is, therefore, found to be devoid of any merit and the same is, accordingly, dismissed.

(Moksha Khajuria Kazmi)
Judge

JAMMU
18.05.2026
Vinod, Secy

Whether order is reportable: No

