

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

Bail App No. 379/2025

*Reserved on: 08.04.2026
Date of pronouncement: 15.04.2026
Date of uploading: 15.04.2026*

*Whether the operative part or full
judgment is pronounced **FULL***

Atif Ahmed Dijoo,
Son of Sana-Ullah,
R/o Mohalla Habik Shanpura
Hazratbal, Srinagar.
Through his father
Sana-Ullah, aged 70, S/o Lt. Abdul
Aziz, R/o Mohalla Habik Shanpura
Hazratbal, Srinagar.

.....Petitioner(s)/Applicant(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Ravi Abrol, Advocate.

vs

01. UT of Jammu and Kashmir
Through police station Bus stand
Jammu.

..... Respondent(s)

02. Superintendent, District Jail,
Amphalla, Jammu.

Through: Mr. P. D. Singh, Dy. AG.

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

JUDGMENT

01. Petitioner has invoked Section 483 BNSS for his enlargement on bail in case FIR No. 28/2023, for offences under Sections 8/21/22 NDPS Act, after an application preferred by him for similar relief came to be dismissed by learned Special Judge (NDPS cases), Jammu [“the trial Court”] citing rigour of Section 37 NDPS Act.

02. Background facts of the prosecution case are that on 17.04.2023, a patrolling party of Police Station, Bus Stand, Jammu at around 1900 hrs. noticed an individual, near Samrat Hotel, coming on foot towards bus stand. On seeing the police party, when he made an attempt to give a slip to the police it created suspicion. He was apprehended and on checking a red coloured printed bag containing 770 capsules of Spasmo Proxyvon concealed in Kellog's Corn Flakes Tetra pack and four packets of Tropicana juice of one ltr. each, containing Corex like Syrup came to be recovered from his possession. He disclosed his name as Atif Ahmed Dijoo, the petitioner, and was arrested on the spot. The investigating agency extracted samples of the capsules and Corex Syrup and forwarded the same for chemical examination to the forensic laboratory. As per the FSL report, "Tramadol Hydrochloride" was detected in the Spasmo Proxyvon capsules and "Codein Phosphate" was detected in the Corex Syrup and as per the literature both Tramadol Hydrochloride and Codein Phosphate are Narcotic Analgesic. The investigation culminated in the presentation of charge sheet against the petitioner in the trial Court. He came to be charged by the trial Court on 31.07.2023, whereby he pleaded not guilty and claimed trial, prompting the trial Court to ask for the prosecution evidence and prosecution so far has examined 06 out of 09 witnesses, cited in the challan.

03. The petitioner preferred an application for his enlargement on bail in the trial Court, which came to be dismissed, primarily on the ground of rigour of Section 37 NDPS Act.

04. Petitioner is aggrieved of the trial Court order *inter alia* on the following grounds:

(a) *That the issue in the present case has been already considered and settled by the Hon'ble Court of Jammu and Kashmir and Ladakh at Srinagar in case titled Touseef Ahmed Khan and granted the bail as such applicant is also entitled similar treatment.*

(b) *That the petitioner is also entitled to bail keeping in view the law laid down by the Hon'ble Supreme court of India in a case reported as **Dataram Singh v. State of U.P., (2018) 3 SCC 22** wherein the Hon'ble Supreme Court of India has held that discretion of the court to grant bail must be used humanely and compassionately. The petitioner is always ready and willing to cooperate not only with the investigating machinery but also undertakes to appear before the Ld. Trial Court on each and every date of hearing, therefore, petitioner deserves to be admitted to bail.*

(c) *That the entire mandatory procedure prescribed under NDPS Act from the date of alleged seizure and arrest of the petitioner, has not at all been properly followed and various contravention and violations of various provisions of NDPS Act have been committed by the respondent No. 1.*

(d) *That the basic rule may perhaps be tersely put as bail not jail except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating utter troubles in the shape of repeating offences or intimidating witnesses and the like by the Petitioner who seeks enlargement on bail from the Court. Grant of bail is the rule and its refusal is an exception. The*

Hon'ble Supreme Court of India in case reported as **State of Rajasthan v. Balchand**, (1977) 4 SCC 308 in which the Hon'ble Supreme court of India has held that:

“The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the applicant who seeks enlargement on bail from the Court.”

- (e) That as per the law laid down by the Apex Court, which has been followed and reiterated by this Hon'ble Court, it becomes clear that long incarceration of an under-trial without any likelihood of conclusion of trial in near future infringes upon the right of speedy trial of such under-trial especially when the petitioner has already undergone two and a half years of incarceration.
- (f) That seriousness of the charge is not test or factor while considering the application for bail. This has been held by the Hon'ble Supreme Court of India in the cases reported as **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40** and **Siddharam Satilingappa Mhetra vs. State of Maharashtra and others (2011) 1 SCC 694**.
- (g) That Apex Court in **Sanjay Chandra** (supra) has held that in bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment unless, it is required to ensure that the accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and duly found guilty.

- (h) That it is trite position of law that If a person is deprived of his liberty under a procedure which is not 'reasonable', fair and just, such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution of India. The aforesaid Article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law.
- (i) That in the instant case, there is every likelihood that this Hon'ble Court may take couple of years more to finally conclude the trial and continued incarceration of the petitioner in jail would be blatant violation of his fundamental right guaranteed under Article 21 of the Constitution of India.
- (j) That the Ld. Trial Court while dismissing/rejecting the bail application filed by the petitioner has not at all properly appreciated the judgments of Hon'ble Supreme Court and Hon'ble High Court which have been relied upon by the petitioner.
- (k) That the petitioner belongs to respectable family and has deep root in the society. At no point of time throughout his life, the petitioner has committed any offence muchless an offence which is punishable under any provisions of law. The petitioner holds significant respect and dignity and because of his arrest, his reputation and image in the eyes of public at large has been completely tarnished.
- (l) That the petitioner undertakes to abide by all such terms and conditions as are found just and proper by this Hon'ble Court while admitting the petitioner to bail. The petitioner has sufficient means to furnish the requisite sureties to the complete satisfaction of this Hon'ble Court or police/jail authorities.

(m) *That the petitioner further undertakes that he will not jump over the bail and shall abide by all such terms and conditions as are found just and proper by this Hon'ble Court and further undertake to appear before the Ld. Trial Court on each and every date of hearing.*

(n) *That the applicant in terms of chapter XV of Jammu and Kashmir High Court rules respectfully submits that he has not moved similar bail application before the Supreme Court and further submits he has not involved in any other criminal case except the present one against whom petitioner is moving the present bail application after the same has been dismissed by Court below.*

- 05.** Respondents have opposed the present application, primarily citing rigor of Section 37 NDPS Act. It is also contention of the respondents that detailed discussion and critical analysis of the evidence produced by the prosecution during the trial at the time of consideration of bail application is not permissible in law. Minor contradictions/discrepancies cannot be looked into while hearing a bail matter. It is also urged that in view of involvement of the petitioner in a heinous nature of crime which carries a severe punishment, there is every apprehension that he may influence the prosecution witnesses.
- 06.** Heard arguments, perused the file and the trial Court record.
- 07.** Mr. Sunil Sethi, learned Sr. counsel appearing for the petitioner while reiterating the grounds urged in the memo of petition has argued that if prosecution evidence is evaluated for the limited purpose, we will

find that there are reasonable grounds to believe that petitioner has not committed any offence under the NDPS Act.

- 08.** *Ex adverso* Mr. P. D. Singh, learned Dy. AG has argued that since a commercial quantity of drugs has been recovered from the conscious possession of the petitioner, and Section 37 NDPS is attracted, he does not deserve the liberty of bail.
- 09.** In cases of recovery of a commercial quantity of contraband in NDPS cases, where a bail plea is opposed by the public prosecutor or the State/UT, accused is obliged to satisfy the Court that there are reasonable grounds to believe that he is not guilty of such offence and Court is mandatorily required to return a finding, in the context of Section 37 of NDPS Act, that accused is not guilty of any such offence.
- 10.** The case set up by the prosecution is that investigating officer extracted a sample of 100 ml each of the Corex Syrup from four packets of Tropicana juice. However, PW Madan Lal Constable, has stated that a sample of 20 ml of Corex was taken by the investigating officer in a bottle. Whereas, PW Khem Raj, ASI, another prosecution witness has stated that bottle in which sample was taken was of 100 ml and full bottle was filled by the IO. It is intriguing to note that statements of all these witnesses have been belied by none other than the Executive Magistrate, PW Kuldeep Singh, Naib Tehsildar who has stated that it was a bottle of 200/250 ml, in which a sample of 100

ml was taken by the IO. Interestingly, the Executive Magistrate has emphatically denied that it was a bottle of 100 ml and was fully filled.

11. True it is that at the stage of consideration of a bail plea, an extensive assessment of the prosecution evidence or merits of the case which has the potential to prejudice either the case of the prosecution or defence is not permissible because it is not a relevant consideration at the threshold stage, however Court is vested with the jurisdiction to evaluate the prosecution evidence for the limited purpose to formulate a *prima facie* opinion about availability of reasonable grounds to believe that accused has not committed any offence. If the prosecution evidence, so far brought on record, is analysed for this limited purpose, what comes to the fore is that 03 material prosecution witnesses have given three different versions with respect to the volume of the sample of Corex syrup, extracted by the investigating agency, against the case set up by the prosecution and the sample received by the FSL.

12. PW Madan Lal Constable has stated that a sample of **20ml** of Corex was drawn by the IO, PW Khem Raj ASI has stated that it was a **bottle of 100 ml in which sample was taken and full bottle was filled**, whereas the Executive Magistrate PW Kuldeep Singh, Naib Tehsildar has stated that a **sample of 100 ml** was taken **in a bottle of 200/250 ml** by the IO and the Executive Magistrate denied that it was a bottle of 100 ml and was filled fully. Be that as it may, the staggering circumstance which needs attention of the Court is that as

per **the FSL report**, 04 bottles of 250 ml, which contained liquid of **80 ml** was received by it.

13. In the circumstances of the case, the question which falls for consideration is whether the embargo contained in Section 37 NDPS Act can be construed to have the same efficacy throughout the pendency of the trial.
14. The petitioner came to be arrested on 17.04.2023 i.e. about three years back. 06 out of 09 prosecution witnesses have already been examined. Remaining three witnesses are two investigating officers and the scientific officer. In the circumstances of the case, prosecution cannot be allowed to invoke stringent provisions of Section 37 NDPS Act in perpetuity and dilute fundamental right of liberty of the petitioner.
15. Hence, present application is allowed and petitioner is directed to be released on bail on his furnishing a solvent surety bond to the tune of Rs. 50,000/- to the satisfaction of learned trial court and a bond of personal recognizance of the like amount to the satisfaction of Superintendent of the concerned jail, subject, however to the following conditions that:
 - i. he shall not jump over bail and tamper the prosecution evidence;
 - ii. he shall not leave territorial jurisdiction of the trial court without prior permission;
 - iii. he shall not commit an offence similar to the offence of which he is accused; and

- iv. 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 tamper with evidence.

16. Disposed of.

(Rajesh Sekhri)
Judge

Jammu
15.04.2026
Sushant

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**

