

HIGH COURT OF JAMMU & KASHMIR & LADAKH AT SRINAGAR

(through virtual mode)

Bail application no. 19/2026

Pronounced on 11.05.2026

Uploaded on 11.05.2026

Sikander Firdous Ahmad Ahanger

applicant/ Petitioner.

Through: Ms. Syed Ainain Qadri, adv.

v.

UT of J&K and ors

....Respondents.

Through: Ms. Maha Majeed, AC vice
Mr. Mohsin ud Showket Qadri, Sr. AAG

Coram:

Hon'ble Mr. Justice Mohammad Yousuf Wani, Judge

1. Through the medium of the instant successive petition having been filed in terms of the provisions of Section 483 of the *Bharatiya Nagarik Surashaa Sanhita, 2023* (hereinafter for short **BNSS**), bail on behalf of the petitioner/accused namely Sikander Firdous Ahmad Ahanger age about 35 years son of Abdul Rehman Ahanger R/o Bemina, Nund Reshi Colony Muslimabad, Srinagar has been sought in case FIR 18/2022 of P/S Batmaloo, Srinagar dated 08.02.2022, exclusively on the health grounds to the effect that he has been suffering from multiple severe ailments including Bipolar disorder and chronic Hepatitis "B" & "C" requiring isolation and immediate specialized medical care and treatment to save his liver failure.
2. It has been mentioned in the application that the petitioner/accused came to be arrested in the case FIR in question on 15.02.2022 and has remained in custody since then except for the period during which he was earlier granted interim bail on health grounds. That his subsequent application for extension of his medical bail came to be rejected by the

learned trial court vide order dated 23.12.2025 and as such he is presently lodged in the Central Jail Srinagar. That he besides suffering from Bipolar disorder is also a documented case of Chronic Hepatitis “B & C” which is a life threatening disease having kept the petitioner/accused at high risk developing liver failure for want of complete medical surveillance and treatment. That he has been presently lodged in the Central Jail Srinagar and his Hepatitis “B & C” infection has put the other jail inmates at high risk of contracting infection. That the learned trial court rejected his bail application moved on health grounds vide order dated 23.12.2025 on the main ground of his being involved in highly anti-social offences punishable under the NDPS Act in relation to the commercial quantity. Commercial quantity of manufactured Narcotic/psychotropic Drug containing codeine as a constituent is alleged to have been recovered from his possession. That he is being taken off and on for his medical checkups to the Government SMHS Hospital, Srinagar and the doctors have been advising his immediate isolation. That he is in dire and immediate need of being kept in isolation as his health condition is wholly dependent upon timely and continuous medical intervention. That the continued incarceration of petitioner in Jail without the availability of the requisite and adequate medical care tantamounts to the serious violation of his fundamental right to life guaranteed under Article 21 of the Constitution of India.

That right to health is integral facet of the right to life. That the provisions of Section 37 of the NDPS Act do not operate a

blanket ban on grant of bail. That the Crime Branch in its detailed enquiry report submitted on 19.01.2024 categorically concluded that the disability certificate issued in favour of the petitioner was not fake.

That he has not made any similar bail application before the Hon'ble Supreme Court or in this Court. However, his earlier bail application for extension of his medical bail came to be rejected by the learned trial court vide order dated 23.12.2025 on the ground of seriousness of the charges against him

That the latest health status report of the petitioner/accused called by the court confirms his Hepatitis B & C infection which is indeed a life threatening disease warranting immediate care and treatment for prevention of his liver failure.

3. I have heard the leaned counsel for the parties and considered their submissions.
4. Perused the instant application supported with an affidavit, the latest health status report dated 06.03.2024 submitted by the senior Medical Officer Central Jail Srinagar through proper channel and the order dated 23.12.2025 of the learned trial court rejecting the earlier bail application of the petitioner.
5. In the back drop, this court is of the opinion that it may meet the ends of justice in case the petitioner/accused is admitted to bail for a some reasonable period of time so as to enable him to get himself properly treated for his underlying disease especially Hepatitis "B & C". The petitioner/accused is not likely to get such standard of treatment as needed by him for his underlying life

threatening liver disease, while being in custody. He needs proper care and treatment at specialized health centers for his disease. There is possibility of his Hepatitis “B & C” infection being carried to his jail inmates.

6. This Court can derive its authority from the provisions of the Section 483 of the BNSS read with the provisions of Article 21 of the Constitution, to address an eventuality, like the present one and pass the appropriate orders regarding temporary bail subject to some stringent conditions, under exceptional and compelling circumstances. After all, a health issue even of a detenu is of paramount consideration. All under trial and convicts have their fundamental right to claim proper medical care and treatment. However, the conditions viz. gravity of the offences charged against an accused, likelihood of his absconding at the trial and influencing the prosecution witnesses, impact of the crime charged against the accused on the society and State shall weigh the consideration of a court while overlooking the statutory bars. When bail is to be considered on humanitarian grounds, the merits of the case do not apply.
7. The basic power to grant bail is derived from the procedural law i.e. BNSS/CrPC and the limitations on the power of a court imposed either by the procedural law or any other special statute, can under some compelling circumstances be read with the relevant provisions of the Constitution and some extra-ordinary provisions itself contained in the procedural law.

8. Otherwise while considering a bail under Section 483 BNSS in a routine manner, the statutory restrictions/limitations as laid down under Section 437 of the Code (corresponding to Section 480 BNSS) have also to be considered.
9. In its opinion this court is fortified with an authoritative judgment of the Hon'ble Karnatka High Court cited as "*Syed Abdul Ala vs Narcotic Control Bureau*", South, 2003 Cri.L.J 999 (Kar) decided on 17 December, 2002 wherein it has been authoritatively laid down that High Court under Section 439 of the Code of Criminal Procedure 1973 (corresponding to Section 483 of BNSS) is not powerless to consider bail on humanitarian grounds notwithstanding the restrictions imposed by section 37 of the NDPS Act. It has been held in the case concerned that provisions of Section 37 of the NDPS Act apply where bail is to be considered on merits. It has been agitated before the Hon'ble Court in the case that power to grant bail is basically derived from Code of Criminal Procedure and not from the NDPS Act and the later only qualifies the power of the court vested under the code. It was held that provisions of Section 37 of NDPS Act do not clamp or cap powers of the High Court to grant bail under section 439 of the Code in its entirety. It is profitable to reproduce paras 9 and 10 of the judgment as under:-

“9. The provisions of Section 37 of the NDPS Act make a drastic departure from the conventional cannons of burden of proof of prima facie case against the accused on the prosecution even at the stage of bail. In respect of the offences under the NDPS Act, the onus is on the accused to prove the innocence/non-complicity in order to secure bail. The restrictions in Section 37 relates to prima-facie material regarding the guilt of the accused. The powers of High Court to grant bail under Section 439 are quite wide and discretionary. Notwithstanding a prima facie case of guilt, under exceptional circumstances, the High Court in its discretion can grant bail. The embargo placed under Section 37 of the NDPS Act operates only when the Court is considering the bail application on merits. Thus, the provisions of Section 37 do not clamp or cap the powers of High Court to grant bail under Section 439 in its entirety. In other words Section 37 operates only as partial eclipse on the powers of the High Court. While deciding the application on merits with reference to prima facie material of guilt then only the provisions of Section 37 operate and they have to be read with the provisions of Section 439 of the Cr. P.C. When the bail is to be granted on other extenuating circumstances or humanitarian ground like the medical ground, the powers of the High Court under Section 439 are not curtailed. The provisions of Section 37 do not operate as a blanket ban on the powers of the High Court under Section 439 of the Cr. P.C.

10. On careful reading of the decisions of the Supreme Court in Kishan Lal's case, I find that there is no ratio laid down to the effect declaring that Section 37 of the NDPS Act, operates as a total blanket ban on the powers of High Court under Section 439 of the Cr. P.C. In the present case, the accused is seeking bail on medical grounds and the Court is considering the case of the petitioner de hors, prima facie material of guilt placed by the prosecution. On humanitarian considerations, the powers of High Court under Section 439 of the Cr.P.C. to grant bail is not eroded or affected by the provisions of Section 37 of the NDPS Act.”

10. In ***“Jasvinder Singh vs State of J&K” B.A No: 156/2019***

decided on 12.04.2021, bail on humanitarian grounds (medical grounds) was granted by this Court to an accused who was suffering from diabetes, which had substantially affected his eye sight as per the medical

records brought to the notice of the Court. It was authoritatively held in the case that the Sec 37 of the NDPS Act only prescribes the limitations on the release of a person on bail. That the powers to grant bail stand vested with the High Court under Section 439 of the Code of Criminal Procedure. That Section 37 of the NDPS Act, comes into play only when bail of a person/accused of an offence involving commercial quantity of a contraband is being considered on merits and the limitations contained therein would not apply when bail is to be granted on humanitarian grounds like medical ground. In such cases the powers of the High Court U/s 439 of the Cr.P.C are not curtailed. Thus the provisions contained under Section 37 of the NDPS Act do not act as a blanket ban on the powers of the High Court U/s 439 of the Cr.P.C.

11. It is a settled legal position that basic human rights cannot be denied to a person regardless of the allegations of the involvement against him. Refusing to grant temporary bail on exclusive health grounds may sometimes endanger his life.

12. For the foregoing discussion, this application is allowed for grant of temporary bail in favour of the petitioner/accused on exclusive health grounds for a period of three months w.e.f the date of his release from the jail so as to enable him to have his medical treatment especially for Hepatitis “B & C” being a chronic life

threatening disease. However, this order shall be subject to the following conditions:-

- i. The petitioner/accused shall furnish surety and personal bail bonds to the tune of ₹1.00 lac each respectively to the satisfaction of learned trial court and the Superintendent of Jail concerned;
- ii. The petitioner shall immediately after the release from the jail in pursuance of this order and without wasting any time ensure his medical treatment.
- iii. The petitioner shall surrender before learned trial court on expiry of the period of 90 days from the date of his release in pursuance of this order.
- iv. The petitioner/accused shall not cause any inducement, threat or undue influence on any of the unexamined prosecution witnesses so as to dissuade them from giving their statements before learned trial court;

13. It is needless to mention that learned trial court shall be at liberty to proceed under the provisions of Sections 491 and 492 of BNSS.

14. In case, the requisite surety bonds are furnished to the satisfaction of learned trial court, a release order shall go from the learned trial court directing the Superintendent, Central Jail, Srinagar, to release the petitioner/accused from custody after obtaining the requisite personal bond to the tune of ₹1.00 lac from him.

14. A copy of this order shall be forwarded to the learned trial court for information and necessary action.

(Mohd Yousuf Wani)
Judge

Jammu
11.05.2026
Ayaz

