

S. No. 8
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App No. 29/2026
CrlM No. (275/2026)

Union Territory through Police Station ...Petitioner/Appellant(s)
Litter

Through: Ms. Nowbahar Khan, Assisting Counsel vice
Mr. Jahangir Dar, GA

Vs.

Manzoor Ahmad Rather ...Respondent(s)

Through: Mr. Shabir Ahmad Dar, Advocate

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

ORDER
02.09.2026

1. The respondent was facing trial in FIR No. 78/2024 registered with Police Station Litter for the commission of an offence punishable under Section 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"). During the pendency of the trial, the respondent came to be admitted to bail by the Trial Court vide order dated 25.08.2025. The said order has been assailed by the Union Territory of Jammu and Kashmir, primarily on the ground that the Trial Court enlarged the respondent on bail without due regard to the statutory embargo contained in Section 37 of the NDPS Act.

2. The impugned order is further assailed on the ground that the Trial Court did not record the requisite satisfaction as to whether the respondent had succeeded in making out a strong prima facie case warranting grant of bail despite the rigours of Section 37 of the NDPS Act. According to the petitioner, the order has been passed mechanically and in undue haste, notwithstanding the fact that, out of ten prosecution witnesses, only seven had been examined and three material witnesses were yet to be examined. It is, thus, contended that the Trial Court failed to appreciate the facts and circumstances of the case in their proper perspective before exercising discretion in favour of the respondent.
3. Ld. Counsel for the respondent, while supporting the order passed by the Trial Court, submitted that by the time the bail application came to be considered, most of the material prosecution witnesses had already been examined. It was particularly urged that the witnesses associated with the seizure had not supported the prosecution case regarding the alleged seizure of the contraband. Despite such witnesses resiling from the prosecution version, the prosecution did not seek leave of the Court to cross-examine them. It was, therefore, contended that the prosecution had failed to discredit the testimony of its own witnesses insofar as the alleged seizure was concerned. Respondent further submitted that the Trial Court had taken note of various material infirmities and lacunae which had surfaced in the prosecution case during the course of trial. On an assessment of the evidence recorded till that stage, the Trial Court formed a reasonable view that the material brought on record was sufficient to enable the

respondent to overcome the rigours contemplated under Section 37 of the NDPS Act.

4. Heard the counsel for the parties and perused the record.
5. The prosecution case arises out of an occurrence dated 07.11.2024. As per the prosecution, while conducting Naka checking at Lassipora, the police intercepted a Swift vehicle bearing registration No. JK01S-4888, which was being driven by the respondent-Manzoor Ahmad Rather. Upon checking the vehicle, a white-coloured nylon bag was allegedly found lying in its dickey. The bag, upon search, was stated to contain a substance resembling "Ganja". When called upon to explain his possession of the said substance, the respondent allegedly failed to furnish any satisfactory explanation. The aforesaid recovery led to the registration of FIR No. 78/2024 and, upon completion of the investigation, the charge-sheet came to be presented before the competent Court.
6. During the pendency of the trial, the respondent moved an application seeking grant of bail. At the stage when the application was considered, the prosecution had examined seven witnesses, including the witnesses connected with the alleged recovery, seizure and sampling, while three witnesses remained to be examined. The Trial Court noticed that PW-1 and PW-6, who were associated with the seizure proceedings, had not supported the prosecution case regarding the seizure of the contraband as well as the vehicle. The Trial Court further noticed that the testimony of PW-3 presented an uncertain and shaky version of the occurrence. It was also observed that although the prosecution claimed that the samples had been

drawn in accordance with the prescribed procedure, the evidence relating thereto suffered from material discrepancies. Taking these circumstances into consideration, the learned Trial Court found sufficient grounds to exercise discretion in favour of the respondent and, accordingly, admitted him to bail.

7. Having examined the impugned order as well as the grounds urged in the present application seeking recall and setting aside of the bail order, this Court finds that the Trial Court has considered the prosecution material in sufficient detail before arriving at the conclusion that the respondent had made out a strong prima facie case for grant of bail. It is not the case of the petitioner that the prosecution was denied an opportunity of hearing. On the contrary, the bail application was considered after most of the material prosecution witnesses, including those associated with the seizure and drawing of samples, had already been examined.
8. While examining the legality of an order granting bail, this Court is not required to undertake a meticulous appreciation of the evidence or record findings which may prejudice either party at the trial. Nevertheless, from a perusal of the impugned order, no material illegality or perversity is discernible in the exercise of discretion by the learned Trial Court. The prosecution was duly heard and its material was taken into consideration. Once the Trial Court noticed material contradictions in the testimonies of the witnesses relating to the seizure of the contraband as well as the drawing of samples, it was justified, at that stage of the proceedings, in forming a prima facie view that the respondent had succeeded in making out a case

sufficient to overcome the statutory embargo contained in Section 37 of the NDPS Act.

9. There is yet another aspect of the matter. Most of the material prosecution witnesses had already been examined when the bail order came to be passed. The impugned order was passed more than a year ago and, by now, the trial ought to have substantially progressed, if not concluded. In these circumstances, even if the assertions made by the prosecution in the present application are accepted at their face value, no useful purpose would be served by directing the respondent to surrender to custody at this stage, particularly when the Trial Court has exercised its discretion after considering the material aspects of the controversy.
10. The right to life and personal liberty of an individual is of paramount importance. At the same time, the special statutory scheme governing offences under the NDPS Act cannot be lost sight of. Sections 35 and 54 of the NDPS Act incorporate statutory presumptions which cast a reverse burden upon the accused, subject to the requirements of law. Equally, where Section 37 of the NDPS Act is attracted, the conditions stipulated therein have to be satisfied before an accused can be admitted to bail. In the present case, however, the Trial Court, upon considering the evidence which had already come on record at the relevant stage, noticed material infirmities in the prosecution case and found the same sufficient to exercise discretion in favour of the respondent. In the facts and circumstances obtaining in the present case, the discretion so exercised cannot be said to be arbitrary, perverse or contrary to law

so as to warrant interference by this Court. For the foregoing reasons, this Court finds no merit in the present application. The same is, accordingly, **dismissed**.

11. It is, however, made clear that the observations made hereinabove are confined to the adjudication of the present application and shall not be construed as an expression of opinion on the merits of the case pending before the learned Trial Court. In case the trial has not already concluded, the Trial Court shall make every endeavour to conclude the same expeditiously, in accordance with law.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:

02.09.2026

Akhil Dev

