HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App. No. 35/2026

Reserved on: 12.05.2026
Pronounced on: 14.05.2026
Uploaded on: 15.05.2026

Operative part or full Judgement: **Full**

Gulzar Ahmad Khan Pathan (54 Yrs.)
S/O Amma Khan Pathan
Through his son namely,
Akib Hussain Khan (29 Yrs.)
R/O Hamnadi, Liver,
Tehsil Sallar District Anantnag, …Petitioner(s)

Through:
Mr. Rizwan-ul-Zaman, Advocate

Vs.

UT of J&K through SHO,
Police Statiion, Srigufwara,
District Anantnag

...Respondent(s)

Through:
Mr. Ilyas Nazir Laway, GA

CORAM:
HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

JUDGEMENT

01. The present application has been preferred by the applicant under Section 483 of the Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023, seeking grant of bail in FIR No. 47/2025 registered at Police Station Srigufwara, for the commission of offences punishable under Sections 8/20 and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The applicant challenges the legality of the order dated 21.02.2026 passed by the learned Special Judge (Designated

under NDPS Act), Anantnag (for short the "*Trial Court*"), whereby his plea for bail was rejected.

02. As per the prosecution story, on 15.07.2025, a police patrolling party at Hamnadi Liver, intercepted the applicant-Gulzar Ahmad Khan Pathan, who was found in possession of 602 grams of Charas. During the course of initial questioning, the applicant made a disclosure statement leading the police to Benard Sallar, where two co-accused, Abdul Rashid Swathi Gojjar and Mohd. Rafiq Swathi Gojjar, were apprehended with 498 grams and 318 grams of Charas, respectively. The investigation culminated in the filing of a charge sheet (Challan) on 01.12.2025, which is currently pending disposal before the learned Trial Court.

03. Being aggrieved of the order dated 21.02.2026 passed by the learned Trial Court in Bail Application Nos. titled *"Gulzar Ahmad Khan Pathan vs. Union Territory of Jammu and Kashmir"*, whereby the bail application of the applicant/accused came to be dismissed, the applicant has preferred the present application seeking enlargement on bail on the grounds that the learned Trial Court has erred in clubbing separate recoveries allegedly effected from different accused persons so as to treat the total quantity as commercial quantity; that the individual recovery from the applicant is 602 grams of charas, which falls within the category of intermediate quantity and, therefore, the rigours of Section 37 of the NDPS Act are not attracted; that separate seizure and recovery memos have been prepared qua each accused and there is no material indicating joint possession or conscious common possession of the contraband; that the prosecution has failed to place on record any *prima facie* material to establish conspiracy or

meeting of minds so as to invoke Section 29 of the NDPS Act, and mere call detail records, in absence of independent corroboration, are insufficient for the said purpose; that the investigation stands completed, charge-sheet has already been filed, and the applicant is in custody since 15.07.2025; that the applicant has no criminal antecedents; and that continued incarceration would amount to pre-trial punishment.

04. The Respondent/State, through its detailed objections, has vehemently opposed the bail application on the grounds that the prosecution contends that the three accused were working in league as close associates. By clubbing the individual recoveries, the total amount of contraband reaches 1.416 kilograms, which exceeds the threshold for "Commercial Quantity" (1kg for Charas). Consequently, the stringent rigors of Section 37 of the NDPS Act are attracted. It is submitted that the material collected, including site plans, recovery memos, and FSL opinions, sufficiently connects the petitioner with the crime; that the drug menace is consuming the social fabric of Jammu & Kashmir. In such heinous crimes, public interest must prevail over individual liberty. Given the gravity of the punishment, the State expresses apprehension that the petitioner may abscond or influence witnesses if enlarged on bail at this stage.

05. Heard learned counsel for the parties, perused the material on the file and considered.

06. The learned counsel for the applicant argued that the trial court failed to consider the matter in its right perspective. He would argue that the recoveries were individual, made from different locations (5km apart), and documented through separate seizure memos. Relying on

Amarsingh Ramjibhai Barot v. State of Gujarat (AIR 2005 SC 4248), he argued that quantities cannot be clubbed to make them "commercial." The 602 grams recovered from the applicant falls under the "Intermediate Quantity" slab, meaning the restrictive "twin conditions" of Section 37 do not apply. The allegation of conspiracy under Section 29 is based solely on a disclosure statement, which is inadmissible under Section 25 of the Bharatiya Sakshya Adhiniyam, 2023.

07. Per contra, the learned counsel for the respondent submitted that the applicant is the main accused who provided the link to the other two co-accused. It is stated that charges have not been formally framed by the Trial Court so far, signifying that a judicial finding of a *prima facie* case of conspiracy and commercial dealing is yet to be considered. The judgments cited by the applicant, such as *Amar Singh Ramji Barote*, involve different factual nuances where conspiracy was not established. Here, the immediate and sequential recovery points to a synchronized drug trade

08. This Court has carefully considered the rival contentions and perused the record. The pivotal issue is the applicability of Section 37 of the NDPS Act, which prohibits the grant of bail unless the Court is satisfied that there are reasonable grounds to believe the accused is not guilty.

09. Though the learned counsel for the applicant has relied upon *Amarsing Ramjibhai Barot v. State of Gujarat,* to contend that individual recoveries cannot be clubbed, the said principle would not *ipso facto* apply where the prosecution alleges conspiracy or organized nexus under Section 29 NDPS Act. At the stage of bail, a

detailed appreciation of evidence is impermissible, lest it may affect the consideration of change by the learned Trial Court. The fact that the disclosure made by the applicant, immediately led to the apprehension of the co-accused with further recovery of contraband *prima facie* indicates a live connecting link amongst the accused persons.

10. As held by the Hon'ble Supreme Court in "***Narcotics Control Bureau v. Mohit Aggarwa", (2022) 4 SCC 713***, once the offence involves commercial quantity, the rigours of Section 37 of the NDPS Act, become operative and bail cannot be granted on liberal considerations. The Hon'ble Supreme Court observed that the satisfaction contemplated under Section 37 is not *prima facie* satisfaction simpliciter, but the Court must record reasonable grounds for believing that the accused is not guilty of the alleged offence.

11. Similarly, in "***State of Kerala v. Rajesh" (2020) 12 SCC 122***, the Hon'ble Supreme Court reiterated that the scheme of Section 37 reveals that the exercise of power to grant bail is subject to the limitations under Section 439 Cr PC as well as the limitation placed by Section 37, which commences with non obstante clause. It is further held that "The expression 'reasonable grounds' means something more than *prima facie* grounds.". Paragraph Nos. 20 and 21 being relevant are reproduced as under:-

> *"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non−obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose*

> *the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.*
>
> *21. 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".*

12. In the present case, the prosecution has invoked Section 29 NDPS Act, alleging a concerted and organized activity amongst the accused persons. The aggregate recovery of 1.416 kilograms of Charas *prima facie* exceeds the notified commercial quantity of 1 kilogram and, therefore, attracts the statutory embargo contained in Section 37 of the NDPS Act.

13. The applicant's argument regarding the inadmissibility of the disclosure statement is a matter of trial. At this stage, when charges are yet to be considered by the learned Special Judge, as such, it will not be proper for this Court to take a view with regard to charge in bail jurisdiction.

14. The menace of drug trafficking is a "heinous and grave" that threatens the larger public interest. The applicant has failed to satisfy the "twin conditions" of Section 37 to rebut the presumption of guilt for the purpose of bail

15. In view of the gravity of the offence, the commercial nature of the total contraband recovered through a shared nexus, and the statutory bar under Section 37 of the NDPS Act, this Court finds no merit in the

present application. The order passed by the learned Trial Court does not suffer from any legal infirmity.

16. Viewed thus, the application seeking the enlargement of the applicant on bail is **dismissed** along with interim application(s).

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
14 .05.2026
Manzoor

HIGH COURT
JAMMU & KASHMIR AND LADAKH