

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

Reserved on: 18.08.2026

Pronounced on: 29.08.2026

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*Whether the operative part
or full judgment is
pronounced: **Full***

**CRM(M) No.126/2024
c/w
Bail App No.45/2024**

FAISAL AHMAD GANIE

... PETITIONER(S)

Through: - Mr. Parvaiz Lone, Advocate.

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - Mr. Mohammad Younis Hafeez, Assisting Counsel.

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

JUDGMENT

01. By this common judgment, afore-titled two petitions filed by the petitioner, namely, Faisal Ahmad Ganie, one under Section 482 of Cr. P. C seeking quashment of order dated 26.02.2024 passed by the learned Additional Sessions Judge, Kupwara, whereby charges have been framed against him and the other under Section 439 of Cr. P. C seeking bail in a case arising out of FIR No.103/2023 for offences under Section 8/20/29 of NDPS Act registered with Policed Station, Kupwara, are proposed to be disposed of.

02. Briefly stated, the case of the prosecution is that on 16.05.2023, the police had laid a Naka on the National

Highway at Kawari Crossing. They intercepted a load carrier bearing No.JK02L-1826, that was proceeding from Srinagar towards Kupwara. Upon questioning, the driver of the vehicle disclosed his name as Sajjad Ahmed Mir. He felt nervous on spotting the police party, whereafter he was subjected to search. During the search, five pouches of charas-like substance, which were wrapped in plastic tape, were recovered from his trouser. Thereafter the vehicle was also subjected to search and from there seven more packets of charas-like substance were recovered. Upon weighing, the recovered contraband substance was found to be 2.10 kgs in weight. FIR No.107 of 2023 was registered and investigation was set into motion.

03. During the course of investigation, the samples were drawn from the recovered contraband substance and the same were sealed and sent to FSL for chemical analysis. The statements of witnesses were recorded and accused Sajjad Ahmed Mir was arrested. During his interrogation, accused Sajjad Ahmed Mir made a disclosure statement that he had obtained the supply of contraband substance from accused Mashooq Ahmad Malik and it was meant to be delivered to accused Mudasir Ahmed Malik. The disclosure statement of accused Sajjad Ahmed Mir was recorded in presence of witnesses and the Executive Magistrate.

04. During investigation of the case, accused Mudasir Ahmad Malik was also arrested and he made a disclosure statement in the presence of witnesses and the Executive Magistrate that on 12.05.2023, he had transferred an amount of Rs.80,000/- from Jammu and Kashmir Bank, Kralpora, to the account of accused Mashooq Ahmad Malik for the purpose of getting the supply of charas from him through accused Sajjad Ahmed Mir. Accused Mashooq Ahmad Malik was also arrested during investigation of the case. The investigating agency obtained the CDRs in respect of the cell phones of the above-named accused and, upon analysis of the CDRs, accused Faisal Ahmad Ganai (the petitioner herein), was suspected to be involved in the conspiracy. The petitioner was also arrested and he made a disclosure statement admitting his involvement in the conspiracy. He further disclosed that he knows accused Sajjad Ahmed Mir and, at his instance, he transferred an amount of Rs.10,000/- in his bank account on 16.05.2023 from J&K Bank Ltd. Panzgam.

05. The challan was laid against the accused before the learned Additional Sessions Judge, Kupwara, on 31.10.2023 and vide impugned order 26.02.2024, charges for offences under Sections 8/21, 27A and 29 of the NDPS

Act were framed against the accused, including the petitioner herein.

06. It appears that trial of the case has progressed substantially, inasmuch as out of 18 prosecution witnesses cited in the challan, statements of as many as 11 prosecution witnesses have already been recorded, which includes most of the material witnesses.

07. Having regard to the fact that evidence of the prosecution has progressed substantially and most of the material witnesses have been examined, it would be too late in the day to test the legality of the order whereby charges have been framed against the accused persons including the petitioner herein. For this reason, this Court declines to go into the legality of the order passed by the trial court whereby charges have been framed against the petitioner, leaving it open to the trial court to go into the contentions raised by the accused persons including the petitioner herein at the time of final disposal of the case.

08. That takes us to the application of the petitioner for grant of bail. According to the petitioner, no contraband substance has been recovered from his possession and that there is no material available on record connecting him to the alleged conspiracy. It has been contended that the

alleged disclosure statement made by the petitioner before the police, on the basis of which he is being sought to be implicated, is not admissible in evidence, as such, there is no legally admissible evidence on record to connect him with the alleged crime. It has also been contended that the trial court, while refusing bail to the petitioner, has not taken all these aspects into consideration.

09. The respondent-Investigation Agency has contested the bail application by filing its reply. In its reply, the respondent, after narrating the allegations made in the charge-sheet, has contended that the petitioner is involved in a heinous crime relating to possession of commercial quantity of contraband substance and, as such, he does not deserve the concession of bail. It has been contended that the rigours of Section 37 of the NDPS Act are applicable to the present case and the petitioner has not been able to satisfy the requirements of the said provisions so as to claim bail in his favour. It has also been contended that if the petitioner is enlarged on bail, he may tamper with the prosecution witnesses.

10. I have heard learned counsel for the parties and perused record of the case.

11. As per the allegations made in the charge-sheet, as narrated hereinbefore, the petitioner is alleged to have

conspired with other accused in connection with possession and sale of commercial quantity of contraband substance. Thus, the rigours of Section 37 of the NDPS Act are applicable to the present case. Unless the petitioner is able to satisfy this Court that there are reasonable grounds for believing that he is not guilty of the offences of which he has been charged, it would not be legally permissible for this Court to extend the concession of bail in his favour. The Court has also to consider as to whether there is any material on record to show that, in case the petitioner is enlarged on bail, he may indulge in similar activities.

12. Turning to the facts of the present case, as per the allegations made in the charge-sheet, the contraband substance has not been recovered from the immediate possession of the petitioner. He is sought to be implicated on the basis of the disclosure statement made by him while in custody in the presence of police officials. Section 23(1) of the Bharatiya Sakshya Adhiniyam (BSS) makes a confession made to a police officer inadmissible in evidence. However, proviso to Section 23 of BSS makes so much of the information, whether it amounts to a confession or not, which relates distinctly to the discovery of a fact, admissible in evidence. Therefore, the disclosure statement made by the

petitioner while in police custody is admissible only to the extent it leads to discovery of a fact.

13. If we have a look at the disclosure statement made by the petitioner before the police, it is revealed that he has furnished information to the police that an amount of Rs.10,000/- had been transferred into the account of accused Mashooq Ahmad Malik on 16.05.2023. If the said information leads to discovery of the fact relating to transfer of Rs.10,000/- into the bank account of accused Mashooq Ahmed Malik, the same is admissible in evidence. However, other part of the disclosure statement dated 16.05.2023, wherein the petitioner is stated to have admitted that he had transferred said amount for the purpose of supply of charas, prima facie, is not admissible in evidence.

14. There is yet another aspect of the matter which is required to be noticed. During trial of the case, the statement of PW-16 Mohammad Ashraf Mir, the person through whom the petitioner is stated to have got the amount transferred into the account of accused Mashooq Ahmad Malik, has been recorded. He has stated that the petitioner came to his shop at Panzgam and requested him to transfer an amount of Rs.10,000/- into a bank account, whereafter he transferred an amount of Rs.10,000/- through his mobile cell phone into his account and requested him to transfer

the said amount into the account of another person and, accordingly, the witness transferred the said amount from the account of his daughter to the account as per the instructions of the petitioner. The witness, in his cross-examination, denied having any knowledge about the petitioner indulging in the business of drug trafficking. He further stated that he does not know accused Mashooq Ahmad Malik, in whose account the money was transferred. This is the only evidence available on record against the petitioner so far as his involvement in the present case is concerned.

15. A cursory analysis of the aforesaid evidence reveals that, at the instance of the petitioner, a sum of Rs.10,000/- has been transferred by PW-16 Mohammad Ashraf Mir into the account of accused Mashooq Ahmad Malik. Merely on this basis, when the petitioner himself has not transferred any amount into the account of accused Mashooq Ahmad Malik, *prima facie*, it cannot be stated that he is guilty of the offences for which he has been charged. Thus, the petitioner has been able to carve out a case for grant of bail in his favour.

16. There is no material on record to show that the petitioner has any previous history of having indulged in

drug trafficking, nor is there any material on record to show that, in case he is admitted to bail, he is going to indulge in similar activities. Besides this, as already stated, most of the material witnesses of the case have already been examined and, in fact, the evidence to the extent of alleged involvement of the petitioner in the crime stands already recorded. Therefore, even if the petitioner is enlarged on bail, there is hardly any chance of his tampering with the prosecution witnesses.

17. For what has been discussed hereinabove, while dismissing the petition challenging the order framing charges against the petitioner, the application of the petitioner for grant of bail is allowed and the petitioner is enlarged on bail, subject to the following conditions:

- (i) *That he shall furnish personal bond in the amount of Rs.1,00,000/ (Rupees one lakh) with two sureties of the like amount to the satisfaction of the learned trial court;*
- (ii) *That he shall appear before the learned trial court on each and every date of hearing till conclusion of the trial.*
- (iii) *That he shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;*

(iv) *That he shall not intimidate or tamper with prosecution witnesses/ evidence.*

18. Anything said in this order shall have no bearing upon the merits of the case.

19. The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Srinagar,
29.08.2026

“Bhat Altaf-Shergatiary”

Whether the **judgment** is reportable: **YES/NO**

