

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App No. 87/2025

Reserved on: 27.04.2026

Pronounced on: 08.05.2026

Uploaded on: 11.05.2026

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

**Sajad Ahmad Abbasi
S/O Ghulam Rasool
R/O Gwalta Uri
District Baramulla**

...Petitioner(s)

Through: Adv. Parvaiz Lone.

Vs.

**Union Territory of J&K through
SHO Police Station CIK Srinagar.**

...Respondent(s)

Through: Mr. Haaris Khan, AC vice
Sr.AAG Mohsin Qadri.

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

JUDGMENT / ORDER

1. The present application has been filed by the petitioner, under Section 439 of Cr.PC (Code of Criminal Procedure) seeking grant of bail in his favour in connection with FIR No.03/2021 registered at Police Station CIK Srinagar, for the offences punishable under Sections 8/21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
2. The applicant herein is aggrieved of rejection of his bail application vide order dated 04.04.2025 passed by the court of learned Special Judge (NDPS), Srinagar, and has challenged that same, *inter alia* on the

grounds that the trial court while rejecting the bail application has not recorded any finding rather no reason has been recorded in the order itself; that the prosecution has not been in a position to prove the case against the applicant so far by examining prosecution witnesses before the trial court as none of the witnesses have substantiated allegations against the applicant; that merely on the basis of statement recorded before the Police the applicant has been impleaded as accused in the case; that it is well settled that confession before the Police is not confession at all; that the trial court has rejected the bail application of the applicant merely on the point that charge has been framed and the quantity of the contraband is commercial so rigor of Section 37 of NDPS Act bars grant of bail; that the applicant is innocent as none of the witnesses have proved the allegations against the applicant; that the co-accused has been granted regular bail vide order dated 16.07.2023, therefore, parity entitles the applicant to the similar relief; that the applicant undertakes to fulfill and abide by all the terms and conditions of the bail.

3. The court below while rejecting the bail application of the applicant has made the following observations:-

“....Applying the twin test under Section 37 of the NDPS Act, this court finds: (i) There are no reasonable grounds to believe that the applicant is not guilty, given the evidence of commercial quantity, recovery and witness corroboration. (ii) There is a tangible likelihood of the applicant committing further offences or frustrating the trial if released, considering the nature of the charges and his prior conduct.

The applicant's pleas are insufficient to overcome these statutory hurdles. The prosecutions' objections, rooted in law, evidence and societal imperatives, outweigh the applicant's personal claims. The larger interest of justice and public safety demands that the applicant remains in custody pending trial....”

4. Learned counsel for the applicant, while arguing the case, submits that the applicant has been falsely implicated in the case and is completely innocent and that the court below has erred in rejecting the Bail Application simply on the ground that the pleas raised by the applicant are insufficient to overcome the statutory hurdles. It is further contended that similarly placed co-accused has been granted bail, therefore, the applicant herein is entitled to bail on the ground of parity. Learned counsel further submits that the applicant is from a humble family background and is the sole bread earner. It is further submitted that the applicant is not likely to abscond or tamper with the prosecution evidence.
5. Learned counsel appearing for the UT of J&K has strongly opposed the bail application and submits that the allegations against the applicant are grave in nature. It is contended that the contraband (197 grams heroin) recovered falls within the category of commercial quantity and that the rigours of Section 37 of the NDPS Act are attracted. It is further submitted that parity alone cannot be a ground for bail in such cases unless the statutory conditions are satisfied. Learned counsel submits that there exists a *prima facie* case against the applicant and that in the event of release on bail, the applicant may indulge in similar activities or influence witnesses.
6. Heard learned counsel for the parties and perused the material on record.
7. Brief facts of the instant case are that the applicant herein along-with another accused stands charged under Sections 8/21 and 29 of the NDPS Act for offenses involving the possession and trafficking of narcotic drugs specifically a commercial quantity of contraband (197

grams heroin); that the case is pending trial before the court below; that the applicant herein was previously granted medical bail for a period of 22 days i.e., from 27.04.2022 to 21.05.2022 which he availed; that thereafter the applicant secured default bail from the court of learned Additional Sessions Judge (TADA/POTA) on 11.05.2022; that the subsequent legal proceedings including an order dated 09.06.2022 passed by the trial court, directing his surrender and arrest, and the dismissal of the petition CRM(M) No.236/2022 by this Court on 19.02.2025, have reaffirmed custodial status of the applicant; that the applicant was re-arrested on 04.03.2025 prompting him to file bail application before the trial court, which came to be rejected vide order dated 04.04.2025, impugned herein.

8. The offences alleged are under Sections 8/21 and 29 of NDPS Act, which are serious in nature. In cases involving commercial quantity, the conditions stipulated under Section 37 of NDPS Act are required to be satisfied before granting bail:
 - (i) that there are reasonable grounds for believing that the accused is not guilty of the offence; and,
 - (ii) that the accused is not likely to commit any offence while on bail.
9. The Hon'ble Supreme Court in a case titled "**State of Kerala Vs. Rajesh**" reported as **(2020) 12 SCC 122**, has held that the limitations under Section 37 of the NDPS Act are mandatory and a liberal approach in the matter of bail is not warranted. Similar view has been taken in "**Union of India Vs. Mohit Aggarwal**" reported as **2022 SCC Online SC 891**, wherein it has been reiterated that bail cannot be granted without recording satisfaction regarding the twin conditions laid down under Section 37 of NDPS Act. Again in "**Union of India Vs. Ram**

Samujh” reported as (1999) 9 SCC 429, the Hon’ble Supreme Court has emphasized the serious nature of offences under the NDPS Act and their harmful impact on the Society.

10. Applying the afore-stated precedents, this Court finds no reasonable grounds to believe the applicant is not guilty. The physical recovery of 197 grams of heroin from the applicant establishes a strong *prima facie* case against him.
11. Insofar as the contention regarding parity is concerned, the Hon’ble Supreme Court in (i) “**Ravindra Saxena Vs. State of Rajasthan**” reported as 2010 (1) SCC 684; and (ii) “**Neeru Yadav Vs. State of Uttar Pradesh**” reported as AIR 2015 SC 3703, has held that parity cannot be claimed as a matter of right and that bail must be considered on the facts and circumstances of each case. It has been further held that grant of bail solely on the ground of parity without independent application of mind, is impermissible. In “**Mahipal Vs. Rajesh Kumar @ Polia & Anr.**” reported as AIR 2020 SC 670, it has been reiterated that the courts must apply their independent mind and not grant bail mechanically on parity. In cases arising under the NDPS Act, the rigours of Section 37, as reiterated in the case of **Union of India Vs. Mohit Aggarwal (supra)**, would override general principles, and unless the statutory conditions are satisfied, parity alone cannot be a ground for grant of bail
12. From the material available on record, this Court is not satisfied that the twin conditions, as envisaged under Section 37 of the NDPS Act, are fulfilled. At this stage, there appears no *prima facie* case against the applicant that he is not guilty. The nature of allegations and the severity of punishment prescribed further weigh against the grant of bail.

13. It is also pertinent to note that the bail application of the applicant has already been rejected by the court below, and no substantial change in circumstances or new grounds have been brought to the notice of this Court warranting a different view. The contention of learned counsel for the applicant, with regard to parity, as already discussed, cannot be considered, as the applicant firstly availed bail on medical grounds, the co-accused was granted regular bail, on parity with the applicant-accused and then he seeks parity with his co-accused who was granted bail, on parity with him. It appears a strange story developing in the same case.
14. In view of the aforesaid facts and circumstances and the legal position, this Court is not inclined to grant bail to the applicant.
15. Accordingly, the bail application is **dismissed**. However, it is clarified that any observations made herein are only for the purpose of deciding the present bail application and shall not be construed as an expression on the merits of the case during trial.
16. Scanned record of the case, as produced, is directed to be sent back to the learned trial court along-with a copy of this order, for record.

(M. A. CHOWDHARY)
JUDGE

Srinagar
08.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No