

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

Pronounced on:07.04.2026

Uploaded on: 15.04.2026

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

Bail App No.114/2025

FAROOQ AHMAD MIR & ANOTHER

...PETITIONERS/APPELLANT(S)

Through: - Mr. Mir Umar, Advocate.

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - Mr. Faheem, GA, vice
Mr. Ilyas Laway, GA

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

JUDGMENT(ORAL)

1) The petitioners, through the medium of present petition, have sought bail in a case arising out of FIR No.158/2023 for offences under Sections 8/15 read with Section 29 of NDPS Act registered with Police Station, Rajbagh, Bijbehara, which is stated to be pending before the Court of Special Judge (Designated under NDPS Act), Anantnag (for short "the Special Judge").

2) As per the allegations made in the challan filed against the petitioners, on 04.07.2023, P/S Bijbehara received source information to the effect that petitioner No.1 has

concealed a large quantity of contraband substance in his residential house at Tulkhan Bijbehara. Upon receipt of this information, FIR No.158/2023 for offences under Section 8/15 and 29 of NDPS Act came to be registered and investigation was set into motion. During the course of investigation, one KG Poppy Straw was recovered from the residential house of petitioner No.1. He was taken into custody on 04.07.2023, whereafter he made a disclosure statement that he along with his associate, petitioner No.2 herein, have concealed more quantity of Poppy Straw under a heap of grass at Tulkhan Bijbehara.

3) On the basis of aforesaid disclosure statement made by petitioner No.1, the police in presence of the Executive Magistrate, 1st Class, reached the spot and it was found that petitioner No.2 is loading Poppy Straw in a load carrier bearing registration No.JK03E-6443 with a view to relocate/conceal the Poppy Straw. The load carrier along with six quintals of Poppy Straw (60 bags) were seized in presence of the Executive Magistrate. Petitioner No.2 was arrested on 05.07.2023.

4) Upon seizure and sealing of the recovered contraband substance, the samples were drawn and the same were sent to the FSL for expert opinion. After receipt of opinion of FSL,

it was found that the aforesaid offences are established against the petitioners and, accordingly, the charge sheet was produced before the learned trial court on 09.09.2023.

5) A perusal of the record would reveal that the charges for offences under Section 8(c) read with Section 15(c) and 29 of NDPS Act stand framed against the petitioners in terms of order dated 03.11.2023 passed by the learned trial court. The record of the trial court shows that out of 20 witnesses cited in the challan, statements of as many as 11 witnesses have been recorded so far. It also appears that the learned trial court vide its order dated 14.05.2025 has declined to extend the concession of bail to the petitioners and has rejected their bail application.

6) The petitioners have sought bail in their favour on the grounds that the learned trial court has, while rejecting bail application of the petitioners, acted in a mechanical manner even though there was no material available with it that would warrant rejection of their bail application. It has been further contended that independent witnesses have not supported the search and seizure procedure and no warrant was obtained before conducting search of the premises of petitioner No.1. It has been further contended that there are serious contradictions in the statements of the prosecution

witnesses which have not been taken into account by the learned trial court while declining bail to the petitioners. It has been further contended that there is delay in trial of the case and, as such, on this ground also, the petitioners are entitled to grant of bail.

7) The respondent Investigating Agency has contested the bail applications by filing its reply to the same. In its reply, the respondent Investigation Agency, has, besides narrating the allegations made in the charge sheet, contended that the petitioners are habitual offenders and they do not deserve the concession of bail. It has been further contended that there is sufficient material available on record to connect the petitioners with the commission of offence and because they are involved in offences relating to possession of commercial quantity of contraband substance, as such, they are not entitled to bail

8) I have heard learned counsel for the parties and perused record of the case including the trial court record.

9) So far as grant of bail in cases involving possession of commercial quantity of contraband is concerned, the Court has to adhere to the procedure and guidelines provided under the provisions contained in Section 37 of the NDPS Act, which reads as under:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

From a perusal of the aforesaid provision, it is clear that in the cases involving offences relating to possession of commercial quantity of contraband substances, in addition to the restrictions imposed by the Code of Criminal Procedure for grant of bail, certain other conditions have been imposed on the power of the Court to grant bail. These conditions include a prior notice to the Public Prosecutor who has to be given an opportunity to oppose the bail

application. Further the Court has to be satisfied that there are reasonable grounds for believing that the person seeking bail is not guilty of such offence and that he is not likely to commit any offence while on bail.

10) The expression “reasonable grounds” has been explained by the Supreme Court in the case of **Collector of Customs, New Delhi vs. Ahmadaliev Nodira**, (2004) 3 SCC 549, in the following manner:

“7.The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused-respondent is concerned, are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. 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.”

11) Again, in **State of Kerala and others vs. Rajesh and others**, (2020) 12 SCC 122, the Supreme Court has observed as under:

“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) The Supreme Court has recently, while relying upon the aforesaid two judgments, in the case of **Narcotics Control Bureau vs. Mohit Aggarwal**, 2022 Live Law (SC) 613, observed as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

13) From the aforesaid analysis of the law on the subject, it is clear that for the limited purpose of considering the bail

application of the petitioners, this Court has to consider the material on record so as to ascertain whether the facts and circumstances are existing that can persuade the Court to believe that the accused person has not committed the offence for which he has been booked. The Court has to be satisfied that there are credible and plausible grounds for believing that the accused is not involved in the offence before granting bail to the said accused.

14) In the light of foregoing analysis of law on the subject, let us now consider the material on record. Before undertaking such an exercise, it has to be borne in mind that at the time of considering a plea for grant of bail, the Court is not expected to meticulously appreciate the evidence led during trial of the case. It is only if the Court, on the basis of cursory look at the evidence led by the prosecution, comes to a *prima facie* conclusion that the accused is not guilty of the offence for which he has been charged, that the accused would be entitled to grant of bail in a case where he has been booked for possession of commercial quantity of the contraband substance.

15) The ground projected by the petitioners for grant of bail is that the evidence lead by the prosecution does not support its case and, therefore, the petitioners are entitled to bail. In

this regard, the learned counsel for the petitioners has particularly made reference to the statement of PW 4, Ghulam Rasool Bhat. It has been contended that the said witness has not supported the prosecution case, particularly with regard to search of house of petitioner No.1 in his presence. He has also contended that PW 9, Mohammad Rafi, has stated that his signatures are not appearing on the seizure memo, EXPW-1/A and, thus, he has resiled from his statement recorded during investigation of the case. On the basis of these grounds, learned counsel for the petitioner has submitted that there is enough doubt on the veracity of the prosecution case and on this basis, it can safely be concluded that the petitioners are not involved in commission of the offence for which they have been charged.

16) As already stated, at the time of considering a plea for grant of bail, the Court is not expected to meticulously appreciate the evidence led during trial of the case. If we have a look at the statements of the prosecution witnesses, a perusal of the same would reveal that, prima facie, they have supported the prosecution version and none of them has turned hostile. Even though from the statement of PW 4, Ghulam Rasool Bhat, it appears that he has raised a doubt about the search of the house of petitioner No.1 having taken place in his presence, yet the said witness has supported the

prosecution case on all other aspects. Similarly, PW 9, Mohammad Rafi, may have stated that his signatures are not appearing on the seizure memo, EXPW-1/A, but he has categorically admitted that seizure of the contraband substance had taken place in his presence.

17) Mere aberrations and contradictions here and there in the statements of the prosecution witnesses would not lead this Court to the conclusion that there are reasonable grounds for believing that the petitioners are not guilty of the offences for which they have been charged, particularly when most of the prosecution witnesses have *prima facie* supported the charges against the accused. Thus, the conditions laid down in Section 37 of the NDPS Act are not satisfied in the present case. Therefore, the petitioners are not entitled to the concession of bail.

18) For the foregoing reasons, I do not find any merit in these petitions. The same are dismissed accordingly.

(Sanjay Dhar)
Judge

SRINAGAR

07.04.2026

“Bhat Altaf-Dargy”

Whether the **Judgement** is speaking: **YES**

Whether the **Judgement** is reportable: **YES**