

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

Bail App. No.118/2026
CrIM No(1084/2026)

SAMEER AHMAD DAR

.....Petitioner(s)

Through: Ms. Syed Gousia Tabasum, Advocate
V/s

UNION TERRITORY THROUGH POLICE STATION SUMBAL
... ..Respondent(s)

Through: Mr.Mohammad Younis, Asstt.counsel

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
29.07.2026

1. The petitioner through the medium of present application has sought bail in the case arising out of FIR No. 25 of 2026 for offence under Section 8/20 of NDPS Act registered with Police Station Sumbal.
2. As per the prosecution case, on 10.02.2024 the petitioner was found to be carrying a bag on his shoulder and as soon as he was noticed by the Naka party at Naka Check point on Sumbal Mirgund Road adjacent to CRPF Camp Sumbal 45th Bn., the petitioner attempted to slip away from the spot. However, the police party apprehended him and conducted search of the bag

which was being carried by the petitioner. During the search charas like substance in the form of cannabis plants was recovered from the bag. After registration of the FIR investigation of the case was set into motion and the petitioner was arrested. The recovered charas/cannabis plant substance was weighed and it was found to be weighing 11kgs and 50 gms. After drawing sample from the recovered charas it was sealed and sent to the FSL for chemical analysis. The statements of the witnesses acquainted with the facts of the case were recorded. After completion of investigation of the case offences under Section 8/20 of NDPS Act were found established against the petitioner. Accordingly, charge sheet was laid before the Additional Sessions Judge, Sumbal.

3. It appears that the petitioner had applied for grant of bail before the learned Additional Sessions Judge but his bail application came to be rejected by the said Court in terms of order dated 18.06.2026. The learned trial Court was primarily persuaded to reject the bail application because there are several FIRs pending against the petitioner.

4. The petitioner has sought bail through the medium of present petition on the ground that the contraband substance which has been allegedly recovered from his possession does not fall under the category of commercialized quantity, as such, the

rigor of Section 37 of the NDPS Act is not applicable to the present case. It has been contended that merely because FIRs have been lodged against the petitioner without there being any conviction operating against him, it was not open to the learned trial Court to reject his bail application. It has been submitted that indefinite incarceration of the petitioner amounts to inflicting punishment upon him without trial, which is impermissible in law. It has been submitted that in a case of present nature, bail application of the petitioner was required to be considered on the parameters as are applicable to any other offence of non-bailable nature, but the learned trial Court has imported the considerations of Section 37 of the NDPS Act while rejecting the bail of the petitioner.

5. The application has been contested by the respondents by filing their reply. In their reply the respondents have submitted that the petitioner is a habitual offender, inasmuch as, there are five FIRs registered against him. It has been further contended that previous NDPS prosecutions against the petitioner have failed to reform him and he has continued to indulge in similar activities, as such, he does not deserve to be enlarged on bail. It has been submitted that having regard to the previous conduct of the petitioner there is a strong possibility that he would again

indulge in the activities which amount to offence under NDPS Act.

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

7. In the present case the petitioner is alleged to have been in possession of intermediate quantity of contraband substance. Hence the rigors of Section 37 of NDPS Act are not attracted to the case of the petitioner. In order to make out a case for grant of bail, it is not necessary for the petitioner to demonstrate that he is prima facie not involved in the alleged offence. The bail application of the petitioner has to be considered on the parameters which are applicable to any other non-bailable offence to which rigors of Section 37 of NDPS Act are not applicable. Thus, grant of bail to the petitioner is a matter of discretion. However, the discretion has to be exercised on settled principles of law as have been enunciated by various judgments rendered by the Supreme Court and by this Court over a period of time. The factors which are to be taken into account while granting bail in the cases of present nature are the stage of investigation, the danger of the prosecution witnesses being tampered with or influenced by the accused in the event of grant of bail in his favour, the gravity of the offence, the public interest and similar other considerations.

8. Coming to the facts of the present case, the petitioner has been arrested on 10.02.2026. Thus, he is in custody for last more than five months. The investigation of the case is complete and the charge sheet has been laid before the competent Court. It is not the case of prosecution that any further recovery is to be effected from the petitioner. The only ground on which the respondents are resisting the bail application of the petitioner is that he is a habitual offender, inasmuch as, he is involved in five FIRs. Therefore, there are high chances that he may again indulge in similar incidents.

9. If we have a look at the particulars of the FIRs which are shown to be registered against the petitioner, it appears that out of five FIRs registered against him only two FIRs pertain to offences under NDPS Act. These FIRs pertain to the year 2021, meaning thereby that during the last five years, excepting the FIR which is subject matter of present bail application, the petitioner is not shown to have been indulged in activities which tantamount to any offence under NDPS Act. It is true that FIRs under IPC and BNS stand registered against the petitioner but there is nothing on record to show that he has indulged in offences relating to possession/transportation of contraband drugs during the last five years. Therefore, the apprehension of

the respondents that if the petitioner is granted bail he may again indulge in drug trafficking, appears to be ill founded.

10. Apart from the above, criminal antecedents of the petitioner cannot form the sole consideration for rejecting his bail application. The Court while considering the prayer for bail has to strike balance between the right of an accused to prepare a proper defence to the charge laid against him and the interests of the society to safeguard it from potential criminal activities of the accused. The cardinal principle that “bail is the rule and the jail is an exception” holds good even in a case where the accused is alleged to be involved in possession of intermediate quantity of contraband substance. Therefore, merely because the accused is alleged to be involved in FIRs besides the FIR in which he is seeking bail, cannot become sole ground for rejecting his bail application. Rejection of the bail to the petitioner in the instant case at a stage when presumption of innocence is attached to him, would amount to his pre-trial incarceration and he would be deprived of his right to prepare the defence against the charges which have been laid against him.

11. For the foregoing reasons, the petitioner has been able to carve out a case for grant of bail at this stage. Accordingly, the application is **allowed** and the petitioner is enlarged on bail subject to the following conditions:-

- i. That he shall furnish personal bond to the tune of Rs.50,000/- to the satisfaction of the Incharge of concerned jail with two sureties of the like amount to the satisfaction of the trial Court.
- ii. That he shall appear before the trial Court on each and every date of hearing unless exempted by the trial Court.
- iii. That he shall not leave the territorial limits of UT of J&K without prior permission from the trial Court.
- iv. That he shall not tamper with the prosecution evidence.

12. Application disposed of.



(SANJAY DHAR)
JUDGE

SRINAGAR
29.07.2026
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No