

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

**Bail App No. 1012023**

UT of JK through Police Station Sumbal

...Appellant(s)/Petitioner(s)

Through: Mr. Jahingeer Ahmad Dar, GA

**Vs.**

Mr. Mehraj Ud Din Parray

...Respondent(s)

Through: Ms. Saniya Qadir, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY PARIHAR-JUDGE**

**ORDER**  
**15.05.2026**

1. The petitioner—Union Territory of Jammu and Kashmir has filed the present petition seeking interference with the order dated 27.05.2023 passed by the learned Principal Sessions Judge, Bandipora, whereby the respondent has been enlarged on bail in case FIR No. 33/2023 registered for offences punishable under Sections 8/21 of the NDPS Act.
2. The case of the prosecution is that during investigation, 10 bottles of Codeine Phosphate of the brand “Nurex Codeine” were recovered from the possession of co-accused Mohammad Ayoub Dar from his Scooty bearing registration No. JK05F-5593. It is further alleged that during investigation, the co-accused disclosed that the respondent herein was also associated with him in possession of contraband substance and, pursuant thereto, another 05 bottles of Codeine Phosphate were recovered from the respondent. According to the prosecution, both the accused persons had conspired together for illegal possession and transportation of manufactured drugs and the total recovery constituted commercial quantity, thereby attracting the rigor of Section 37 of the NDPS Act read with Section 29 thereof.

3. Learned counsel for the petitioner argued that the learned Trial Court failed to appreciate the statutory embargo contained under Section 37 of the NDPS Act and committed grave illegality in granting bail to the respondent. It is submitted that the quantity recovered from both the accused persons was liable to be considered collectively in view of the conspiracy alleged against them and, therefore, the respondent was not entitled to concession of bail.
4. Per contra, it was noticed by the learned Trial Court that only 05 bottles of Codeine Phosphate had been recovered from the possession of the respondent and the prosecution had failed to establish any prima facie material connecting the respondent with the contraband allegedly recovered from the co-accused. The learned Trial Court found that the recoveries appeared to have been effected separately and independently and, therefore, at that stage, the allegation of conspiracy under Section 29 NDPS Act was not sufficiently substantiated.
5. During the course of hearing, it was brought to notice that the trial is presently underway and charges have already been framed against the respondent and the co-accused on 25.04.2023. It was further informed that though the prosecution has cited as many as 14 witnesses, not even a single witness has been examined till date and the matter is presently listed for prosecution evidence on 18.06.2026. When confronted with regard to such delay, learned counsel for the petitioner was unable to furnish any satisfactory explanation for non-examination of prosecution witnesses for such a considerable period of time.
6. It is not in dispute that the respondent has remained on bail since 27.05.2023. Nothing has been brought to the notice of this Court to demonstrate that after his enlargement on bail, the respondent has misused the concession granted to him, attempted to influence witnesses, obstructed the trial, or indulged in any unlawful activity.
7. The law with regard to interference in an order granting bail is well settled. Once discretion has been exercised by the Court of competent jurisdiction in accordance with law and by passing a reasoned order, the same is not to be lightly interfered with unless the order suffers from patent illegality or the accused has misused the liberty so granted.

8. In the present case, the order passed by the learned Trial Court cannot be termed as cryptic or perverse. The learned Trial Court has assigned detailed reasons while granting bail to the respondent. Furthermore, the prosecution itself has failed to ensure expeditious progress of the trial as no prosecution witness has been examined till date.
9. This Court is of the considered opinion that no useful purpose would be served by recalling the order of bail and sending the respondent back to custody at this stage, particularly when the trial has not progressed owing to delay attributable to the prosecution. It is trite that bail is the rule and jail is an exception and pre-trial incarceration cannot be permitted to assume the character of punishment.
10. In view of the aforesaid facts and circumstances, this Court finds no ground warranting interference with the order dated 27.05.2023 passed by the learned Principal Sessions Judge, Bandipora.
11. Accordingly, the petition is **dismissed**.
12. However, the learned Trial Court is directed to ensure that the prosecution witnesses are examined expeditiously and every endeavour shall be made for early conclusion of the trial.

**(SANJAY PARIHAR)**  
**JUDGE**

SRINAGAR  
15.05.2026  
"Imtiyaz"