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Regular

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

CRM(M) 590/2026 CrIM(1365/2026)

UNION TERRITORY THROUGH POLICE STATION NISHAT

..... Petitioner(s)

Through: Mr. Mohsin Qadiri, Sr. AAG
with Mr. Faheem Nisar, GA

V/s

NADEEM QADIR CHOPAN

..... Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER

10.08.2026

1. The petitioner, has challenged order dated 06.02.2026, passed by the learned Special Judge NDPS Cases, Srinagar whereby bail has been granted to the respondent in a case arising out of FIR No. 98/2025 for offences under Section 8/21/29 of the NDPS Act registered with Police Station, Nishat, Srinagar.
2. Heard learned counsel for the petitioner and perused the record.
3. It appears that the respondent/accused has been found to be in possession of 5.04 grams of Heroin pursuant whereto a challan came to be filed against him before the learned Special Judge. It appears that during the pendency of the challan before the learned Special Judge, the respondent/accused

applied for bail and his application was accepted by the learned trial court in terms of impugned order dated 06.02.2026.

4. The petitioner has challenged the impugned order on the ground that the learned trial Magistrate has failed to appreciate gravity and seriousness of offence as the offence of trafficking in drugs affect the public health and order. It has been contended that the respondent is already involved in another FIR No. 8/2025 for offences under Sections 8/21/29 of NDPS registered with Police Station Nishat, Srinagar as such, he is a habitual offender. Keeping in view the gravity of offence, the respondent was not entitled to grant of bail.
5. If we have a look at the impugned order passed by the learned Special Judge, it is clear that the quantity of contraband substance recovered from the respondent is slightly higher than the small quantity and it falls within the parameters of the intermediate quantity, therefore the rigour of Section 37 of NDPS is not applicable to the present case. In such cases the grant or refusal of bail entirely lies within the discretion of the concerned court. Of course, the discretion has to be exercised on the basis of settled principles of law as have been evolved

from time to time in terms of various judgments delivered by the Supreme Court and this Court. These factors include:

- i) Gravity of offence
- ii) Stage of investigation
- iii) Public interest
- iv) Potential of the accused to thwart the investigation/trial and;
- v) Propensity of the accused to commit similar offences and such other factors.

6. Coming to the facts of the present case, the co-accused in the case has been enlarged on bail which is recorded in the impugned order. The charge sheet has already been filed and the trial is going on before the learned Special Judge. The contention of the petitioner that the respondent was previously involved in a similar case, it seems, has not been brought to the notice of the learned Special Judge. In any case without there being anything on record before the learned Special Judge, it was not possible for the said court to conclude that the respondent was a habitual offender.

7. It is true that the menace of drug trafficking has assumed alarming proportions but for this reason only, an accused who is otherwise entitled to bail cannot be kept behind the

bars to teach him a lesson. The interests of the society have to be balanced with right of an accused to fair trial and his right to liberty. If the respondent is kept in prolonged incarceration, it will adversely affect his ability to prepare a defence to the charge sheet that has been laid against him which would adversely impact his right of fair trial.

8. In view of the aforesaid circumstances, the learned Special Judge has rightly exercised the discretion of granting bail in favour of the respondent/accused.
9. Accordingly, I do not find any ground to interfere with the impugned order passed by the learned Special Judge. The petition lacks merit and is accordingly *dismissed*.

(Sanjay Dhar)
Judge

SRINAGAR

10.08.2026

Aasif