

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

CRM(M) 644/2026 CrIM(1474/2026]

UNION TERRITORY THROUGH POLICE STATION RAM MUNSHI BAGH
..... Petitioner(s)

Through: Mr. Younis, AC

V/s

MOHAMMAD SHOIAB LAWAY

..... Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER

18.08.2026

1. The petitioner has challenged order dated 28.01.2026 passed by the learned Special Judge NDPS Cases, Srinagar whereby the learned Special Judge has granted bail to the petitioner in case arising out of FIR No. 85/2025 for offences under Sections 8/20/29 of NDPS Act registered with Police Station, Ram Munshi Bagh, Srinagar.
2. The ground urged for impugning the order of the learned Special Judge is that the same suffers from arbitrariness and non-application of mind. It has been contended that the learned Special Judge has failed to appreciate the gravity and seriousness of the allegations. It has been further contended

that the respondent/accused is a habitual offender and is already involved in FIR No. 119/2024 of Police Station, Ram Munshi Bagh, Srinagar but this fact has not been taken into account by the learned Special Judge.

3. I have heard learned counsel for the petitioner and I have also gone through the material on record.
4. As per the allegations made in the challan, on 15.10.2025, the police found the respondent/accused in possession of 110 grams of charas. Having regard to the quantity of contraband substance recovered from the respondent/accused, rigours of Section 37 of the Act are not attracted as the recovered quantity falls under the parameters of intermediate quantity. Therefore, the grant or refusal of bail to the respondent was a matter of discretion for the learned Special Judge. Of course, the discretion was to be exercised on the basis of settled principles of law enunciated by the Supreme Court and this Court in various judgments.
5. In the present case, the investigation of the case is complete and the charge sheet has already been laid before the learned Special Judge. The respondent has spent more than three

months in custody. Merely because one more FIR was registered against the respondent prior to the FIR which is subject matter of the present case, does not disentitle him to bail and make him a habitual offender. Having regard to the quantity of contraband substance recovered from the respondent, it appears that he is more of a consumer than a drug trafficker. Therefore, respondent appears to be a victim of drug trafficking. Thus, his case cannot be equated with a case of habitual drug trafficker.

6. Apart from the above, the respondent/accused cannot be incarcerated indefinitely merely to teach him a lesson and makes an example out of him. Incarceration of respondent/accused for indefinite period would hamper his ability to defend the charges which have been laid against him, as such, his right to fair trial would get adversely impacted. The court has to balance the societal interest and the right of the accused to fair trial. When we balance these two factors in the facts and circumstances of the present case, the scale heavily tilts in favour of the respondent/accused.

7. In view of the above, the learned Special Judge has rightly exercised his discretion in granting bail to the respondent which cannot be interfered by this Court in exercise of its powers under Section 528 of BNSS.

8. For the foregoing reasons, I do not find any ground to interfere with the order passed by the learned Special Judge. The petition lacks merit and is accordingly *dismissed*.

(Sanjay Dhar)
Judge

SRINAGAR

18.08.2026

Aasif