

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

Bail App No. 193/2025

Reserved On: 7th of April, 2026.
Pronounced On: 17th of April, 2026.
Uploaded On: 17th of April, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Aijaz Ahmad Dar, Age: 27 Years
S/O Ghulam Mohammad Dar
R/O Russu, Narbal, District Budgam
Through his wife, namely,
Kulsuma Akhter, Age: 28 Years
W/O Aijaz Ahmad Dar
R/O Russu, Narbal, District Budgam.

... Petitioner(s)

Through: -

Mr Syed Faisal Qadri, Senior Advocate with
M/S Bhat Shafi and Rayees Lone, Advocates.

V/s

1. **Union Territory of Jammu & Kashmir**,
Through Superintendent,
Central Jail, Srinagar.

2. Station House Officer, Police Station,
Beerwah, Budgam, Kashmir.

... Respondents

Through: -

Mr Bikramdeep Singh, Dy. AG with
Ms Nowbahar Khan, Advocate.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioner has invoked the jurisdiction of this Court under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (for short "the BNSS"), for his enlargement on bail in a case arising out of FIR No. 111/2022 registered at Police Station Beerwah, Budgam, for the commission of offences punishable under Sections 8/ 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as

“the NDPS Act”) and Sections 109, 407, 120-B of the Indian Penal Code (IPC), wherein the Petitioner, along with two other co-accused, namely, Khursheed Ahmad Dar and Gh. Mohd. Dar, are facing trial for the commission of aforementioned offences before the Court of learned Additional Sessions Judge (Fast Track), Budgam (“the Trial Court” for brevity.)

02. The Petitioner, by virtue of the instant Petition, is seeking bail, mainly on the ground that he is behind the bars for more than three years and that all the witnesses, examined so far, have made totally contradictory statements on the point of recovery of psychotropic substance; that his other two accused have already been admitted to interim bail by the Trial Court vide Order dated 3rd of June, 2023, which was subsequently made absolute vide Order dated 15th of April, 2025, as such, on the basis of parity, he too deserves the same concession of bail.

03. In opposition, the Respondents have filed their Objections, *inter alia*, stating therein that the Petitioner is involved in a heinous crime where recovery of huge commercial quantity of contraband has been effected from the joint residential premises of the accused. It is further stated that the Petitioner has dishonestly cheated the members of public by falsely representing Government rice as branded rice and induced them to deliver money, thereby causing wrongful loss to the consumers and wrongful gain to himself. The Respondents have further pleaded that the release of the Petitioner, at this stage, poses a serious threat to the fair trial process and that there exists every possibility that the Petitioner may tamper with the prosecution evidence, influence witnesses or even abscond from the jurisdiction of the Court, as such, the bail application filed by the Petitioner merits outright rejection.

04. Mr Syed Faisal Qadri, the learned Senior Counsel, appearing for the Petitioner, submits that the poppy straw, weighing 171 KG, was alleged to have been recovered and seized from the nylon bags from the

houses of all the accused and their joint tin shed in the compound and that all the three accused were arrested, however, the Trial Court had bailed out two of the accused and denied bail to the Petitioner herein under a misconception that the Petitioner is the main accused, though the Respondents, in their Objections, have admitted and so is also borne out from the record and the evidence led by the Prosecution before the Trial Court, that the seized contraband had been recovered from the joint property of all the accused, including the Petitioner herein.

05. He has further argued that out of 31 Prosecution witnesses cited in the witness calendar, 22 have already been examined, including all the eye-witnesses and, now, the witnesses left to be examined are either formal or witnesses to prove charges other than the offences punishable under the NDPS Act. In this regard, the learned Senior Counsel has drawn the attention of this Court to the statements of PWs-Mohammad Ayoub Malik (Sarpanch), Muzaffar Ahmad Khan and Farooq Ahmad Sheikh, who had been cited as witnesses to the recovery and seizure, and submitted that all of them have stated that the recovery was made from the tin shed which was under the joint ownership and possession of all the accused, including the Petitioner; that even the witnesses, who have been cited as independent witnesses to the search, recovery and seizure, have also dilated in their statements that the recovery was made before their arrival on spot and that the seized material had already been packed. In this behalf, he made reference to the statements of PW-Mohammad Ayoub Malik and PW-Abdul Latief Dar.

06. The learned Senior Counsel has further argued that the Petitioner is entitled to be admitted to bail in view of Section 52 of the NDPS Act, having been observed in breach by the investigating agency, inasmuch as, the grounds of arrest were not given to the accused before their arrest; that the Petitioner seeks the grant of bail on the ground of parity when the co-accused have already been granted bail facing the same

charges as the rigor of Section 37 of the NDPS Act, which prohibits grant of bail without satisfying the Court with regard to twin conditions contained therein: (a) that the Public Prosecutor is to be heard; and (b) that the bail is to be granted when the Court is satisfied of the Applicant/ accused being not guilty, cannot be bifurcated in case of the accused who have been charged and are facing the same offences; and that the Petitioner, as undertrial, has been suffering long incarceration of almost four years which is against his cherished fundamental right of liberty guaranteed under Article 21 of the Constitution and that since the recovery had not been made from the person of the Petitioner, as such, the same cannot be stated to be his conscious possession. He finally prayed that the accused/ Petitioner be admitted to bail.

07. Mr Bikramdeep Singh, the learned Deputy Advocate General, appearing for the Respondents, *ex-adverso*, argued that the Petitioner has been facing the charge of having in his possession huge commercial quantity of the contraband, as such, he is not entitled to be enlarged on bail, unless the Trial Court draws a satisfaction to the fact that the Petitioner is *prima facie* found not to be guilty and that, at this stage when most of the evidence has been led by the Prosecution and the witnesses had made incriminating statements, such an opinion with regard to the guilt of the accused-Petitioner cannot be made that he is not guilty of the offences of which he has been charged.

08. Learned Counsel for the Respondents further argued that the Petitioner had made two attempts for grant of bail earlier before the Trial Court and his bail has been rejected; that the ground of parity advanced by the learned Senior Counsel for the Petitioner is not available to the Petitioner as the offences for which the Petitioner herein and the co-accused have been charged are different; and that when the Prosecution has succeeded to examine as many as 23 witnesses, there cannot be a plea of long incarceration which can be attributed to the Prosecution, so as to

entitle the Petitioner for grant of bail. He finally prayed that the instant Petition be rejected, being devoid of any merit.

09. Heard learned Counsel for the parties and also perused the pleadings on record. I have also gone through the scanned record received from the Court below.

10. The Prosecution case, in brief, is that on 8th of August, 2022, Police Station, Beerwah received an information through reliable sources that one Aijaz Ahmad Dar Son of Ghulam Mohammad Dar/ Petitioner herein, in connivance with unknown persons of the Department of Food, Civil Supplies & Consumer Affairs, is involved in the business of collecting/ hoarding Government rice meant for distribution among the ration holders through PDS System and are packing/ selling the same Government rice in small nylon bags under the mark of “Kamal Special Brand Rice” and “Apple Special Brand Rice”. The said information also revealed that the Petitioner had kept the hoarded Government rice in a tin shed located within his residential premises at Village Russoo, besides, the Petitioner had also kept the poppy straw packed in nylon bags hidden in the same tin shed and is looking forward to relocate the same.

11. On the basis of the aforesaid information, Police Station Beerwah registered a case vide FIR No. 111/2022 for the commission of offences punishable under Sections 8/15 of the NDPS Act and Sections 407 and 102-B of the Indian Penal Code (IPC), whereafter, investigation was set into motion.

12. During the course of investigation, search was made in the afore-stated tin shed, wherefrom 46 Kattas of sealed Government rice, each Katta weighing 50 KG along with 18 Nylon bags containing poppy straw like substance with some fresh nylon bags marked as “Kamal Special Brand Rice” and Apple Special Brand Rice”, numbering 167 in total, were recovered. The poppy straw recovered from the tin shed, weighing 170 KG in total, was seized out of which samples were drawn and sent to FSL for

opinion. After obtaining the opinion, the confirmation of poppy straw was obtained from the FSL, as such, offences under Sections 8, 15 and 29 of the NDPS Act read with Sections 407 and 120-B of the Indian Penal Code (IPC) were proved against the Petitioner-Aijaz Ahmad Dar, whereas, the offences under Section 29 of the NDPS Act and Section 109 of the Indian Penal Code (IPC) were proved against the other two co-accused, namely, Khursheed Ahmad Dar and Gh. Mohd. Dar.

13. Accordingly, on completion of investigation, charge sheet was laid before the Trial Court and, vide Order dated 21st of October, 2022, charges were framed against the accused for the commission of offences punishable under Sections 8/15 of the NDPS Act and Sections 468, 472, 420 and 109 of the Indian Penal Code (IPC).

14. It is noteworthy that in order to bring home the charge against the accused, the Prosecution has cited as many as 31 witnesses in the witness calendar, out of which, by now, 22 witnesses have been examined.

15. The Petitioner had moved an application seeking his enlargement on bail before the Trial Court, however, same was dismissed by Order dated 30th of August, 2025, mainly, on the ground that a huge quantity of psychotropic substance (contraband), i.e., 170 KG of poppy straw, has been recovered from his possession, which falls under the category of “Commercial Quantity”, as defined under the NDPS Act.

16. At the outset, it needs to be noticed that insofar as the principles regarding grant or refusal of bail to an accused are concerned, the same are more or less settled. The considerations that must weigh with the Court, while deciding a bail application, are as under:

“(i) Whether there is a *prima facie* or reasonable ground to believe that the accused has committed the offence(s);

(ii) Nature and gravity of the charge;

(iii) Severity of punishment in the event of conviction;

(iv) Danger of accused absconding or fleeing, if released on bail;

(v) Character, behaviour, means, position and standing of the accused;

(vi) Likelihood of the offence(s) being repeated;

(vii) Reasonable apprehension of the witnesses being tampered with; and

(viii) Danger of course of justice being thwarted by grant of bail.”

17. When it comes to offences punishable under the NDPS Act, particularly those which involve possession of commercial quantity of contraband substance, the Court, however, has to keep in view something more than the aforesaid principles. Section 36C of the NDPS Act makes the Code of Criminal Procedure applicable to the proceedings before a Special Court, which includes the provisions as to bail and bonds. At the same time, Section 37 of the NDPS Act stipulates additional conditions before a person accused of committing an offence, involving commercial quantity of contraband substance, is released on bail, therefore, it would be apt to refer to the provisions contained in Section 37 of the NDPS Act:

“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.”

18. From a perusal of the aforesaid provision, it is clear that Section 37 of the NDPS Act is not a complete bar to grant of bail in a case where recovery of contraband drug falls within the parameters of commercial quantity. It only provides that bail in such cases cannot be granted, unless the Public Prosecutor has been given an opportunity to oppose the application and that there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

19. Having regard to the aforesaid legal position and adverting to the facts of the present case, it is seen that the Petitioner, as an accused, is in custody for the last nearly four years and has been facing trial in a case wherein 31 witnesses have been cited as Prosecution witnesses, out of whom, 22 have been examined so far. Though, the Petitioner and the co-accused have been charged for the commission of different offences under the NDPS Act, but the main accused is the Petitioner herein, who is alleged to have kept in his possession huge commercial quantity of poppy straw, whereas, the other accused are alleged to have abetted him under a criminal conspiracy.

20. On a perusal of the record from the Court below, it has been found that most of the witnesses relating to the commission of the offences under the NDPS Act have been examined and the other witnesses, who are stated not to have been examined thus far, relate to the commission of offences punishable under the IPC, so as to prove the commission of fraud with regard to Government ration, wherein no such rigor is applicable as is applicable in the case of the NDPS Act. That being so and keeping in view the factum of grant of bail to the other co-accused in the same offences, this

Court is of the considered opinion that the Petitioner herein, as co-accused, is entitled to seek parity for grant of bail, especially when the possession, recovery and seizure of the alleged commercial poppy straw (contraband substance) has to be attributed jointly to them, from their joint property.

21. Apart from the above, on perusal of the statements of the witnesses examined during trial by the Trial Court, without commenting upon their merit in evidence, lest it may affect the case, this Court is of the considered opinion that the Petitioner herein is also entitled to be admitted to bail, at this stage, when he has already undergone nearly four years of detention as an under-trial and the co-accused have been admitted to bail by the Trial Court.

22. Having regard to the foregoing reasons and the discussion made hereinabove, the present Petition is **allowed** and the Petitioner is admitted to bail in connection with case bearing FIR No. 111/2022 registered in Police Station Beerwah, Budgam, subject to the conditions to the satisfaction of the Trial Court.

23. Copy of this Judgment be forwarded to the learned Trial Court for information and compliance.

24. **Disposed** of, accordingly, along with pending application(s), if any.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

17th April, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.