HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Bail App. No. 204/2025

Pronounced on: **06.**11.2026
Uploaded on: **06.**11.2026
Operative part or full judgment : ***Full***

Shabir Ahmed Wani
S/O Nazir Ahmed Wani
R/O Syedpora Iddgah, Srinagar.

Through: Mr. Z.A. Qureshi, Sr. Advocate with
Ms. Rehana Fayaz, Advocate.
…..Petitioner

Vs.

1. UT of J&K through
Sr. Additional Advocate General
High Court of J&K, Srinagar/Ladakh
Srinagar.

2. Station House Officer
Police Station,
Rajbagh, Srinagar.

Through: Mr. Mohsin Qadri, Sr. AAG
….. Respondents

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

JUDGMENT

1. The petitioner, through the medium of this petition filed under section 483 of the BNSS, 2023, seeks bail, in a case pending before the Special Court (NDPS Cases), Srinagar arising out of FIR No. 17/2023 registered at Police Station, Rajbagh, Srinagar for the commission of offences punishable under Sections 8, 21, 27 and 29 of the NDPS Act read with Section 201 IPC.

2. It has been pleaded that the prosecution till date has examined 18 witnesses out of 33 witnesses; that the bail application filed by the petitioner before the trial court of Special Judge (NDPS) cases, Srinagar was rejected, vide order dated 05.08.2025; that nothing was recovered from the possession of the petitioner and that the petitioner was arrested on the basis of the disclosure made by co-accused persons which under law was inadmissible; that the only evidence on record so far as petitioner is concerned which has been pressed by the respondents is the transfer of an amount of Rs. 1.50 lacs to the petitioner's bank account but the fact of the matter is that the said amount was transferred on account of sale of car, however, the deal could not mature as a result the petitioner re-transferred the amount of Rs. 1.48 lacs, to the account of the said sender on the same day; that from the account of accused Ghariat Ali Badana, only an amount of Rs. 5,000/- was transferred to the account of the petitioner; that the witnesses, who have been examined so far, did not incriminate the petitioner in commission of offence; that the petitioner has been charged under section 27 when there is no allegation or evidence, indicating ingredients to constitute an offence against the petitioner under section 27 of the Act; that the rigor of Section 37 of the NDPS Act is not applicable in the case of the petitioner as he has neither been charged under section 19, 24 or 27-A of the NDPS Act nor any narcotic drug or psychotropic substance was recovered from the possession of the petitioner.

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3. It is has been further pleaded in the petition that the petitioner has already spent two years and five months in the jail and the evidence so far recorded, does not involve the petitioner in the commission of offence, much less for which the petitioner has been charged under sections 8, 21, 27 and 29 of the NDPS Act. Finally it has been prayed that the petitioner be enlarged on bail.

4. Pursuant to notice, the respondents filed objections, asserting therein that the petitioner has been involved in a heinous crime punishable under sections 8, 21, 27 and 29 of the NDPS Act read with section 201 IPC, as such, the bail application of the petitioner has been rightly rejected by the trial court; that the petitioner, pursuant to a aforementioned criminal conspiracy, was charged to have smuggled into India, possessed, sold, purchased, transported and financed the commercial quantity of narcotic substance (Heroin) and has committed offences under various sections of law, whereafter the chargesheet was produced before the court on 9th of September, 2023 against all the accused and many witnesses are yet to be examined; that the petitioner was found involved in purchasing and financing of huge consignment of illegal banned psychotropic drugs (Heroin) and further selling among youths of the society; that if the petitioner is released on bail, he may again indulge in such activities; that the petitioner is involved in the offences against the society at large which may destroy the youth beyond any repair, inasmuch as the menace of drug addiction has engulfed the society and is creating havoc to the families which

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needs to be dealt with an iron hand; that there are reasonable grounds for believing that the petitioner would jump the concessions of bail, if granted to him by the Court, as such, the application merits rejection.

5. Heard learned counsel for the parties and perused the record.

6. From the perusal of the chargesheet, it transpires that an amount of Rs. 5,000/- was transferred from account No. 0267040100007223 of J&K Bank account belonging to the petitioner to account number owned by co-accused Gairat Ali, which was then transferred to the main accused No. 1-Sajad Ahmad Badana, as such, the petitioner was involved along with co-accused, in the financing of narcotics trade.

7. The principal contention raised on behalf of the petitioner is that no contraband substance has been recovered from his possession and that his implication in the instant case is found merely upon the disclosure statements of the co-accused, which are inadmissible in evidence. It is further contended that the financial transactions relied upon by the prosecution have been sufficiently explained by the petitioner and that the evidence recorded so far does not disclose his involvement in the commission of any of the alleged offences.

8. On the other hand, the prosecution has specifically alleged that the petitioner was associated with the co-accused in financing the narcotics trade. The material collected during investigation, as

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reflected in the chargesheet, indicates that an amount of Rs. 5,000/- was transferred from the bank account of the petitioner to the account of co-accused Gairat Ali, which was subsequently transferred to the principal accused, namely, Sajad Ahmad Badana. The prosecution seeks to rely upon the aforesaid financial transaction as one of the circumstances connecting the petitioner with the alleged narcotics trafficking network.

9. It is a settled proposition of law that, while considering an application for bail, the Court is not required to undertake a meticulous examination of the evidence or to record a finding regarding the guilt or innocence of the accused. The exercise is essentially confined to a 'prima facie' assessment of the material available on record, the nature and gravity of the accusations, the circumstances in which the offence is alleged to have been committed, and the statutory limitations governing the grant of bail.

10. The offences alleged in the instant case arise out of an alleged organized narcotics trafficking operation involving a substantial consignment of heroin. The menace of drug trafficking has assumed alarming proportions and poses a serious threat to the social fabric of society, particularly to the younger generation. The proliferation of narcotic substances not only jeopardises the health and well-being of individuals but also undermines the social and economic stability of families and communities. The gravity of such offences, therefore, cannot be viewed merely from the standpoint of

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an individual transaction but has to be examined in the broader context of their pernicious consequences upon society.

11. The contention that no narcotic substance was recovered from the possession of the petitioner, by itself, cannot be regarded as sufficient to entitle him to the concession of bail. The prosecution case, as presently projected, is not confined to the physical possession of contraband but also alleges the involvement of the petitioner in the financing of narcotics trafficking and his association with the co-accused in furtherance of the alleged criminal conspiracy. The absence of recovery from the petitioner, therefore, is a circumstance which may be examined during trial but does not, at this stage, conclusively displace the allegations founded upon the other material collected by the investigating agency.

12. The explanation furnished by the petitioner with regard to the transfer of Rs. 1.50 lakhs, allegedly arising out of a proposed sale of a vehicle, as also the subsequent re-transfer of Rs. 1.48 lakhs, involves an appreciation of the factual circumstances and the financial transactions relied upon by the parties. Similarly, the nature, purpose and circumstances of the transfer of Rs. 5,000/- to the account of the co-accused and its subsequent movement to the account of the principal accused require examination in the light of the evidence which may be adduced during trial. At this stage, the Court cannot undertake a detailed scrutiny of such transactions so

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as to conclusively accept the explanation furnished by the petitioner or to discard the prosecution version altogether.

13. The statutory restrictions contained in Section 37 of the NDPS Act assume significance in the present case, particularly in view of the prosecution allegation concerning the involvement of the accused persons in the trafficking of commercial quantity of heroin. Where the offence alleged involves commercial quantity, the twin conditions prescribed under Section 37 of the NDPS Act are required to be satisfied before an accused can be enlarged on bail. The Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. These conditions are cumulative in nature and constitute substantive limitations upon the exercise of jurisdiction to grant bail.

14. In the present case, having regard to the material collected during investigation, the alleged financial linkage between the petitioner and the co-accused, the nature of the accusations relating to the financing of narcotics trafficking, and the stage of the trial, this Court is not persuaded to record a satisfaction that the statutory requirements for grant of bail stand fulfilled. The material presently available does not enable the Court to arrive at the requisite satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of the offences alleged against him.

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The first condition stipulated under Section 37 of the NDPS Act, therefore, cannot be said to have been satisfied.

15. The argument that the petitioner has remained in custody for a period of approximately two years and five months and that eighteen witnesses out of thirty-three have already been examined, though relevant, cannot by itself override the statutory restrictions governing the grant of bail in offences involving commercial quantity of narcotic substances. The question of prolonged incarceration and delay in conclusion of trial may, in an appropriate case, furnish an independent ground for consideration of bail; however, in the facts and circumstances presently brought to the notice of this Court, the same does not warrant the grant of bail at this stage.

16. For the foregoing reasons, this Court finds no legal ground to enlarge the petitioner on bail. The petition is, accordingly, **dismissed.**

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(M.A Chowdhary)
Judge

Jammu:
06.11.2026
Naresh

Whether the order is speaking? Yes
Whether the order is reportable? Yes

Naresh Kumar
2026.11.06 18:32
I attest to the accuracy and
integrity of this document