

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

**Bail App No.368/2025
CrlM No.2286/2025**

*Date of pronouncement: 09.02.2026
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**Mazeed Ali, Age 25 years
S/o Faqir Ali
R/o Dhami Nagrota Jammu.**

.....Applicant

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate.

Vs

**UT of J&K through Station Officer
Police Station Majalta, Udhampur**

...Respondent

Through: Mr. Sumeet Bhatia, GA.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

(ORAL)

- 01.** Applicant has invoked Section 482 BNSS, for his enlargement on bail, in anticipation of arrest, in FIR No.0090/2025 registered with Police Station Majalta, Udhampur for offences under Sections 8/21/22 of NDPS Act, primarily on the ground that he has been falsely implicated in the case on the statement of co-accused, Latif Ali, from whose possession an intermediate quantity of contraband is alleged to have been recovered.
- 02.** As the prosecution story would unfurl, SGCT Sanjay Kumar forwarded a docket to the Police Station on behalf of ASI Vijay Kumar, alleging *inter alia* that on 06.11.2025, at about 1030 hours, while they were performing Naka duty, they intercepted a motor cycle bearing registration No.JK02DL/5407 on its way from Manwal to Battal. Rider of the motor

cycle disclosed his name as Latief Ali and on his personal search, a transparent polythene came to be recovered from right pocket of his pent. On opening, it was found to contain heroin (chitta) like substance. Further, 01 small weighing machine, a mobile phone and cash worth of Rs.6100/- came to be recovered from other pocket of his pent and he failed to give satisfactory reply. On the receipt of this docket, FIR came to be registered against Latief Ali and one Sanjay Kumar.

03. Apprehending his arrest, the applicant approached learned Principal Sessions Judge, Udhampur (“the trial Court”), who vide order dated 29.11.2025 declined bail plea of applicant after it surfaced from the case diary that during a period of about one year an amount of Rs.27,66,600/-, amount of Rs.31,98,522/- and another amount of Rs.1,36,300/- had been deposited by co-accused persons in his SBI Account No.6444 and another amount of Rs.31,98,522 were deposited by co-accused Sanjay Kumar in his J&K Bank Account No.1413. It was also alleged that co-accused Latief Ali, during investigation, made a statement that applicant had concealed some commercial quantity of contraband. According to the investigating agency, brother of the applicant, co-accused Latief Ali during investigation had disclosed that applicant was the main supplier, who was supplying contraband to him and he in turn was making delivery to accused Sanjay Kumar, who was already arrested in another case of the like nature. The investigating agency obtained bank account statements of accused Latif Ali, Sanjay Kumar and the applicant/accused Mazeed Ali.

04. The applicant has approached this Court for his enlargement on bail, *inter alia*, on the grounds that main accused Latief Ali from whose conscious possession an intermediate quantity of contraband came to be recovered and co-accused Sanjay Kumar have already been enlarged on bail by the

trial Court. He has been dragged in false and frivolous case on the basis of statement made by his brother, who is living separately. No recovery has been affected from his conscious possession. It is contention of the applicant that the transactions, referred by the investigating agency are in fact the loans availed by him for the purchase of vehicles, those have been reflected in his bank account statements and an amount credited in his account by his father with respect to his share, after he sold some property. Applicant has produced statements of bank accounts in support of his contention.

- 05.** Heard arguments and perused the file.
- 06.** Mr. Abhinav Sharma, learned senior counsel appearing for the applicant has reiterated the grounds urged in the memo of petition.
- 07.** On the other hand, Mr. Sumeet Bhatia, learned Govt. counsel has opposed the bail plea on the ground of gravity of the charge.
- 08.** Provisions of Cr.P.C., now BNS, confer discretionary jurisdiction on Courts to consider a bail plea. The discretionary jurisdiction of Court to grant or refuse a bail plea is regulated by settled principles of law, on the basis of facts and circumstances obtaining a case, including the gravity of charge, seriousness of the offence, potential impact on the investigation, or trial, propensity on the part of accused to jump over bail and tamper the prosecution evidence, the nature of accusations and the severity of punishment, which conviction may ultimately entail. Therefore, grant or refusal of bail must reflect a perfect balance between conflicting interests of shielding the society from the hazards of criminals and absolute adherence to the fundamental postulate of criminal jurisprudence regarding the presumption of innocence of accused till proven guilty.

09. It is allegation of respondent-investigating agency that all the accused persons namely, Latief Ali, applicant Mazeed Ali and Sanjay Kumar have indulged in sale and purchase of Narcotic drugs. On the basis of this allegation, *inter alia*, offence under Section 27-A of NDPS Act has been charged against them.

10. Section 27-A for the facility of reference is extracted below:

"27A. Punishment for financing illicit traffic and harbouring offenders—

Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of [clause (viii) of section 2] or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:
Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

11. It is evident from a plain reading of Section 27-A NDPS Act that it is required to be read in conjunction with Section 2(viii)(i) to (v) of the Act, which for the ease of reference is extracted below:

2. Definitions.- In this Act, unless the context otherwise requires,

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx

[(viii)] "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-

- i. cultivating any coca plant or gathering any portion of coca plant;
- ii. cultivating the opium poppy or any cannabis plant;
- iii. **engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;**
- iv. dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or
- v. handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv);

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorization issued, thereunder, and includes—

**(1) financing, directly or indirectly, any of the
aforementioned activities;**

**(2) abetting or conspiring in the furtherance of or in support of
doing any of the aforementioned activities; and**

**(3) harbouring persons engaged in any of the
aforementioned activities;]**

(Emphasis Supplied)

12. Section 2 (viii b) NDPS Act defines “illicit traffic” in relation to narcotic drugs and psychotropic substances occurring in clauses (i) to (v). If sub clause (iii) and sub clause (v) (1) and (3) of Section 2(viii b), are closely analyzed, it is manifest that engagement in the possession, sale purchase, transportation, warehousing, concealment, etc. of ‘illicit traffic’ with respect to Narcotic Drugs and Psychotropic Substances is different from direct or indirect “financing” of contrabands and “harboring” persons engaged in the activities. Further, activities enumerated in sub-section (iii) of Section 2(viii b) of the Act are punishable under Sections 20 to 23 whereas “financing” of illicit traffic and “harboring offenders” is punishable under Section 27A of the Act. Therefore, there is clear distinction between engagement in the sale, purchase, transportation, ware-house, concealment, etc. of Narcotic Drugs and Psychotropic Substances from “financing” of illicit traffic and “harboring” of the offenders.
13. Though expressions, “Financing” and “Harbouring” are not been defined anywhere in NDPS Act, however, Bombay High Court in **Rhea Chakraborty Vs. Union of India; AIR ONLINE 2020 BOM 1252** by reference to the statements of objects and reasons of NDPS Act, which came to be amended w.e.f. 29.05.1989, and by reference to the definitions of ‘finance’ as they emerge in various dictionaries, discussed the import of Section 27A NDPS Act.

14. “Finance”, in **Black’s Law Dictionary** has been defined as “to raise or provide funds”. The meaning of “finance” in **Chambers dictionary** is “to manage financially; to provide or support with money.” The **Concise Oxford Dictionary** defines the word ‘finance’ as “(i) the management of (esp. public) money; (ii) monetary support for an enterprise, (iii) money resources of a State, Company, or person, to provide capital for (a person or enterprise)”.
15. It is manifest, as such, from aforesaid definitions that all the activities mentioned in clause 2 (viii b) (iii), and Section 27-A NDPS Act involve monetary transactions. In other words, there is use of money in sale and purchase and also in financing. However, financing, in common parlance, would mean providing funds to facilitate the activities contained in sub clauses (i) to (v) of clause (viii b) of Section 2 of NDPS Act and involves the activities other than sale or purchase of narcotic drugs or psychotropic substances.
16. A Financer being skilled in financial transactions would often lend, invest or raise capital to sustain a particular activity. He is not privy to the activity or a sale transaction. Thus, “Finance”, in essence means to facilitate economic activity by enabling somebody to secure the funds, he needs to operate. On the other hand, a sale consideration or a payment made for a particular transaction would not amount to “financing”.
17. Similarly, “harbouring” requires an element of protecting or shielding a drug trafficker from legal action.

18. If the present case is approached with the aforesaid principle of law, there is no *prima facie* evidence to support Section 27-A charge, as the material available do not meet the direct threshold. Allegation against the applicant is that some amounts had been credited into his account by Latief Ali and co-accused Sanjay Kumar. However, there is nothing on the record or in the CD file to reflect that applicant at any point of time provided money or financed co-accused or anybody else or credited any amount into the account of co-accused or anybody else to finance the activities within the meaning of sub-clause (v) of Clause (viii b) of Section 2 NDPS Act. I do not find the factual foundation to verify the allegation that petitioner, at any point of time, directly or indirectly indulged in financing the activities specified in sub clause (v) of clause (viii b) of Section 2 NDPS or harboured any person engaged in such activities.
19. Be that as it may, the contraband, in the present case came to be recovered from the possession of co-accused Latif Ali and not from the possession of the applicant. Accused Latif Ali, from whose conscious possession intermediate quantity of contraband is alleged to have been recovered and co-accused Sanjay Kumar have already been enlarged on bail by the trial Court. The prosecution, as on date, has not approached the trial Court or any other Court for cancellation of their bails.
20. Another aspect, which needs attention is that applicant came to be implicated, in the present case, on the basis of statement of his brother, co-accused Latif Ali, during investigation of the case, pertinently, when he was in custody.

21. A three Judge Bench of Hon'ble Supreme Court, in **Tofan Singh Vs. State of Tamil Nadu; (2021) 4 SCC 1**, has held that since the officers vested with the power under Section 53 of NDPS Act are "Police Officers", any confessional statement recorded by them under Section 67 NDPS Act will remain inadmissible under Section 25 of the Evidence Act and cannot be taken into consideration to convict an accused under NDPS Act.

Relevant excerpt of the judgment, reads as below:

"158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provision of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2 That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

22. Hon'ble Supreme Court in **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and Anr.; 2022 (2) Supreme 409** though ruled that CDR details of an accused is an aspect that is to be examined during the trial but refused to cancel bail of the respondents-accused, on the ground that contraband was not recovered from their conscious possession.

Relevant observation of Hon'ble Supreme Court captured in para 10 of the judgment reads as below:

10. "It has been held in clear terms in Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tempering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial.

For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16 January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Dairy No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773- 74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail to the respective respondents, are dismissed as meritless.

23. Having regard to the aforesaid, present application is allowed and applicant is directed to be released on bail subject to his furnishing a surety bond in the amount of Rs.1.00 lac to the satisfaction of learned trial Court and a bond of personal recognizance of like amount, subject, however, to the following conditions that;

- i) he is not involved in any other offence of like nature;
- ii) he shall not jump over bail and make an attempt to tamper the prosecution evidence or coerce the witnesses;
- iii) he shall not leave territorial jurisdiction of the trial Court without prior permission; and
- iv) he shall appear before the IO and cooperate with the investigating agency, as and when directed.

24. *Disposed of.*

(Rajesh Sekhri)
Judge

Jammu
09.02.2026
Eva

Whether the order is speaking or not?	Yes
Whether the order is reportable or not?	Yes