

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

[Through Virtual Mode]

Bail App No. 250/2025

Reserved On: 5th of March, 2026.
Pronounced On: 11th of March, 2026.
Uploaded On: 11th of March, 2026.

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

Gurjit Singh, Age: 38 Years
S/O Balbir Singh
R/O Digiana Ashram near Govt. High School,
Digiana, Jammu
Through Mother Sandeep Kaur, Age: 60 Years.

... Petitioner(s)

Through: -

Mr Prince Khanna, Advocate with
Mr Aashray Ahand, Advocate.

V/s

Narcotics Control Bureau, Jammu Zone,
Through its Zonal Director.

... Respondents

Through: -

Mr Vishal Sharma, DSGI with
Mr Eishaan Dadhichi, CGSC.

CORAM: HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(JUDGMENT)

01. The Petitioner has invoked the jurisdiction of this Court under Section 483 of the Bharatiya Nagarik Suraksha Sanhita [BNSS] for his enlargement on bail for allegedly commission of offences punishable under Sections 8, 21, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act ["NDPS Act"].

02. The Petitioner and co-accused were sent up for trial for the commission of aforementioned offences by the Narcotics Control Bureau ["NCB"], Jammu and are as such facing trial before the Court of learned Special Judge (NDPS cases), Jammu ["the Trial Court"].

03. The Prosecution case, in brief, is that on August 06, 2018, NCB, Jammu alleged to have received a written complaint from the Station House Officer (SHO), Bahu Fort, Jammu, that they have received an information about transportation of narcotics consignment in a truck bearing registration No. JK02AD-3965. Accordingly, a team of NCB, Jammu, in collaboration with the police team of Police Station Bahu Fort, laid a Naka at Rajiv Nagar Chowk, Narwal Bye-Pass, Jammu, on August 06, 2018 and at around 1300 hours, the Truck in question was intercepted. On enquiry, the driver and conductor have disclosed their identities as Gurjit Singh (Petitioner herein) and Ravi Kumar (co-accused), respectively. During search, the accused said to have made a disclosure statement that the consignment of *Heroin* has been concealed in a false cavity of the cabin at the rear side of the truck. Consequently, 51 packets of *Heroin*, weighing 52.523 kilograms, including packaging material, alleged to have been recovered and seized. The Petitioner also alleged to have made a statement under Section 67 of the NDPS Act, whereby he had disclosed the names of other kingpins involved in the drug trafficking.

04. Accordingly, on completion of investigation, a complaint was filed by the NCB, Jammu, against the Petitioner and co-accused, which led to framing of formal charges vide Order dated May 03, 2019 for the commission of offences punishable under Sections 8, 21, 29, and 60 of the NDPS Act.

05. It is noteworthy that in order to bring home the charge against the accused, the Prosecution has cited as many as 13 witnesses in the witness calendar, out of which, by now, 10 witnesses have been examined.

06. The Petitioner had moved an application seeking his enlargement on bail before the Trial Court, however, same was dismissed by Order dated June 25, 2025, mainly on the ground of statutory bar of Section 37 of the NDPS Act and seizure of huge commercial quantity of *Heroin*, which, as per the Trial Court, was having more than Rs. 250 crores

market value, coupled with the past involvement of the Petitioner in commission of such type offences.

07. The Petitioner, by virtue of the instant Petition, is seeking bail, mainly on the ground that the Prosecution has examined only 06 witnesses, out of 14 cited witnesses and further that the Petitioner is behind the bars for more than seven years. Further ground taken by the Petitioner is that all the witnesses examined so far have made totally contradictory statements on the point of recovery of narcotics.

08. The star ground taken by the Petitioner is that he has undergone detention period of more than one-third of the maximum punishment specified for the offences and, thus, he being first-time offender is entitled to bail in terms of first *proviso* to Section 479 of BNSS.

09. In opposition, the Respondents have filed the Objections and note whereof shall be taken hereinafter at appropriate stage.

10. Heard learned Counsel for the parties and also perused the record.

11. Indisputably, the Petitioner was sent up for trial for allegedly trafficking in huge commercial quantity of *Heroin* and, according to the Trial Court, the market value of the seized contraband is more than Rs. 250 crores. Therefore, it goes without saying that the huge commercial quantity of *Heroin* came to be recovered from the possession of the Petitioner and the Trial Court, after drawing *prima facie* satisfaction, has drawn up formal charges against the Petitioner for the commission of offences punishable under Sections 8, 21, 29 and 60 of the NDPS Act. It is equally noteworthy that by now, out of the 13 enlisted witnesses, the Prosecution has examined 10 witnesses, and, now, only three witnesses are to be examined.

12. In '**Narcotics Control Bureau V. Kashif, 2025 (2) Supreme 268**', the Hon'ble Supreme Court, while dealing with the compliance of the mandate of Section 37 of the NDPS Act, observed that, where the offence is

punishable with minimum sentence of 10 years, the accused shall generally be not released on bail and, in this regard, **‘negation of bail is the rule and its grant is an exception’**. It has been further held that, while considering the application for bail, the Court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. However, the recording of finding, as mandated in Section 37, is the *sine qua non* for granting bail to the accused involved in the offence under the said Act. Similar view has been taken by the Hon’ble Supreme Court in **‘State of Meghalaya V. Lalrintluanga Sailo & Anr., 2024 (6) Supreme 568’**.

13. The Hon’ble Supreme Court in **‘Union of India V. Vigin K. Varghese, 2025 SCC Online (SC) 2440’**, observed thus:

“17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii), which would disentitle the discretionary relief and grant of bail, must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of subjective control and antecedent involvement, risks trenching upon appreciation of evidence, which would be in the domain of trial court at first instance.”

From the above-stated dictum of law, it is pellucid that Section 37 of the NDPS Act is mandatory and when same is pitted against the plea of prolonged incarceration and likely delay of the trial, the conditions contained in Section 37 of the NDPS Act have the precedence.

14. Now, turning to the case on hand, the Petitioner did not specifically indicate as to how the evidence recorded so far does not connect him with the alleged commission of offence. Therefore, mere wholesale assertion is not sufficient to rebut the presumption arrived by the Trial Court, while framing the charges.

15. It is important to note that in '**Narcotics Bureau V. Mohit Agarwal, (2022) 18 SCC 374**', a three-judge Bench of the Hon'ble Supreme Court held that the length of the period of custody or that charge sheet had been filed or even that the trial has not commenced, by themselves, are not considerations that can be treated as persuasive grounds to grant bail under Section 37 of the NDPS Act.

16. In '**State of Karnataka V. Shri Darshan, (2025) SCC Online SC 1702**', which is a *locus classicus* on the subject, the Hon'ble Supreme Court observed that, while considering the bail, only the *prima facie* assessment of the material is warranted and the Court cannot conduct a mini-trial or record conclusion that can influence the outcome of the trial. In **Shri Darshan's case (supra)**, while citing the Judgement passed in '**Ash Mohammad V. Shiv Raj Singh @ Lalla Bahu & Anr., (2012) 9 SCC 446**', it has been, *inter alia*, held that the period of custody, while relevant, must be weighted against the totality of circumstances, including the nature of crime and criminal antecedents. It was further held that in serious offenses, the gravity of the offense and its impact on society must weigh heavily with the Court and such cases must have to be considered with greater care and circumspection

17. In view of above, it is made abundantly clear that heinous crimes punishable with minimum sentence of 10 years, the accused shall generally be not released on bail, and thus, he cannot seek bail as a matter of right merely on length of incarceration, unless countervailing circumstances have been shown to the satisfaction of the Court.

18. The Petitioner, in the case on hand, except making wholesale assertions, did not put forth any circumstance, much less from the evidence recorded so far, to show that the Prosecution witnesses did not support the allegations on the basis of which the charges have been framed against Petitioner or that the evidence is of such fragile nature that imminently leads to the presumption of innocence in favor of the Petitioner.

19. Now, turning to the second limb of argument that the Petitioner is a first-time offender and has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for the offences for which he has been charged, therefore, is entitled to bail. In this regard, *inter alia*, charge against the Petitioner is framed under Section 21 (c) of the NDPS Act that carries rigorous imprisonment for a term which would not be less than ten years, but which may extend to twenty years. To buttress this point, the learned Counsel for the Petitioner went onto submit that the Petitioner has already undergone detention for more than seven years, therefore, he has acquired an indefeasible right of enlargement on bail in terms of first *proviso* to Section 479 of the BNSS.

20. *Per contra*, Mr Vishal Sharma, the learned DSGI, submitted that the Petitioner is not the first-time offender, as previously he was also involved in the commission of offence under Section 8/ 15 of the NDPS Act, therefore he is not entitled to the benefit of first *proviso* to Section 479 of BNSS. The learned Counsel further went onto submit that under second *proviso* to Section 479 of BNSS, the Court may continue detention of such person for a longer period than one-third or one-half of the undergone detention period, as such, keeping in view the gravity of offence and past antecedents of the Petitioner, he is not entitled to the concession of bail in terms of Section 479 of BNSS.

21. Section 479 of BNSS deals with maximum period for which an under-trial prisoner can be detained and the underlying object of this Section aligns with the right of the accused to have speedy trial. However, Section 479 of BNSS creates two categories of under-trial prisoners, i.e., (i) first-time offenders, who are entitled to be released on bail after undergone one-third of the maximum punishment period; and (ii) the second category is of those accused who are entitled to be released on bail after one-half of the maximum punishment period is undergone. The second *proviso* further

states that the Court may, for the reasons to be recorded and after hearing the Public Prosecutor, order the continued detention of such person beyond one-half of said period or release him on bail bond instead of bond.

22. Now, the question arises as to whether the second *proviso*, whereby the Court has the discretion to order the continued detention longer than one-half of the period undergone, also applies to first *proviso* to Section 479 of BNSS.

23. When the statutory provision has *proviso(s)* prescribing different time periods for release of an accused and one *proviso* preserves the discretion of the Court, then well established principle of statutory interpretation applies to harmonize the both. A proviso is normally meant to qualify, carve out or explain the main provision and not to destroy it.

24. The Hon'ble Supreme Court in '**S. Sundaram Pillai v. V. R. Pattabiraman, AIR 1985 Supreme Court 582**', held that a *proviso* may; qualify the main enactment or create an exception from the main provision.

25. Therefore, *proviso* cannot be read in isolation and must be interpreted harmoniously with the main Section and with each other also, thus, interpretation of one *proviso* in a way that renders the other meaningless is to be avoided.

26. Under *proviso* first of Section 479 of BNSS, an accused, after completing the period of statutory threshold, becomes entitled to approach the Court for his release on bail, whereas, the second *proviso* retains the discretion of the Court to extend the threshold period. In this view of the matter, the interpretation of both the *provisos*, on harmonious construction, leads to the conclusion that release is not absolute, it remains subject to judicial discretion which has been preserved by second *proviso*. As a necessary concomitant to harmonious construction, upon completion of the threshold period, the accused only gets a right to move before the Court for

his release on bail, whereas, the Court retains its discretion to extend the period, though in exceptional circumstances.

27. Therefore, both the *provisos* must be read harmoniously and not in isolation, when the first part of the provision makes the Court's discretion in another part meaningless, such interpretation is impermissible and further *proviso* cannot be interpreted independently, so as to nullify the main provision. Accordingly, if one *proviso* gives a threshold benefit, the other *proviso* retains the discretion with the Court, as such, both must be read together, so that the Court still retains the power to assess circumstances. Let us assume if on completion of one one-third of the maximum period of imprisonment, there will be an automatic release solely on completion of threshold period, it may allow release even in serious and grave offences, therefore, such an interpretation would lead to absurdity and will take away the discretionary power of the Court, which is neither intended by the Legislature nor is discernible from the reading of Section 479 of BNSS.

28. Therefore, where the Statute prescribes a threshold time, but another part retains judicial discretion, the correct interpretation is that the threshold creates eligibility for consideration, but not automatic entitlement. If the strict automatic release were intended in the one-third category, the Statute would have expressly prohibited judicial discretion, which it does not. Even in cases where an accused becomes eligible for release after completion of one-third of maximum sentence, the Court may still examine the facts of the case, hear the Public Prosecutor and record reasons if detention needs to be continued.

29. From the above analysis, it is conspicuous that sub-section (1) of Section 479 of BNSS is to be read with first *proviso*, which provides the period of imprisonment after completion of which the under trial is entitled to get the benefit of Section 479 of BNSS. Furthermore, the second *proviso* is also applicable to sub-Section (1) of Section 479. Therefore, both the

provisos being integral part of the main provision of Section 479 of BNSS, thus, are to be read and interpreted conjointly and harmoniously, thereby preserving the discretion of the Court in extending the one-third period of detention, as envisaged under the first *proviso* to Section 479 of BNSS.

30. As a corollary to the above discussion, the argument that the Petitioner is entitled to indefeasible right of bail as he has undergone detention for a period extending upto one-third of the maximum period of imprisonment specified for the offences he has been charged for and further that, in such cases, the discretion does not lie with the Court to order the continued detention beyond the said period is not legally tenable. The discretion to order the continued detention beyond the maximum period of one-third is retained with the Court and can be ordered for reasons to be recorded and after hearing the Public Prosecutor.

31. Now, turning to the case on hand, the contraband was seized from the possession of the Petitioner and he has not been able to point out the existence of any fact or circumstance that is sufficient to justify recording of a finding that he is not guilty of the offences charged and hence the rigors of Section 37 of the NDPS Act are fully applicable. In absence of any countervailing circumstance leaning towards the innocence of the Petitioner, the Petitioner cannot draw the benefit of *proviso* to Section 479 of BNSS only on the ground of prolonged trial or incarceration, as has been held in **Shri Darshan's case (supra)** that mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation or the likelihood of tampering the witnesses.

32. It has been further seen that the trial is at the verge of completion as only three witnesses are to be recorded and the Petitioner has been allegedly found in the possession of huge quantity of *Heroin* having market value of more than Rs. 250 crores and also found involved earlier in offence punishable under Section 8 (15) of the NDPS Act, therefore, on this

count also, he is not entitled to the benevolence of bail, in view of the nature and gravity of offence and his antecedent.

33. For the foregoing reasons, the instant bail application is **dismissed**. However, keeping in view the period of incarceration of the Petitioner, the Trial Court shall record the remaining witnesses in one calendar and thereafter shall conclude the trial within two months positively.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR

March 11th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.

