

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

Reserved on: 17.03.2025

Pronounced on: 25.03.2025

Bail App No. 252/2024

CrIM No. 1638/2024, 1974/2024

1. **Yugraj Singh**Appellant(s)/Petitioner(s)
Aged 29 years S/O Balkar Singh
R/O Devidass Pura, Jandiala,
Amritsar Rural, Punjab.

Through: Mr. Amjed Khan, Advocate.

Vs

1. **Union Territory of Jammu and Kashmir** Respondent(s)
Th. Superintendent District Jail Kathua
2. **Station House Officer,**
Police Station, Ghagwal, District Samba

Through: Mr. Vishal Bharti, Dy. AG.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Petitioner-Yugraj Singh has, through the medium of the instant bail application, invoked jurisdiction of this Court under Section 483 of BNSS, 2023 for grant of bail in a case arising out of FIR No. 33/2023 for offences under Sections 8/21/22/25/27-A/29 NDPS Act, registered with Police Station, Ghagwal.
2. As per case of the prosecution, on 30.03.2023 the Police of Police Station, Ghagwal laid a naka at Tapyal at around 11.00 A.M. They intercepted a Tata Nexon car bearing registration No. PB02EM-4235 that was proceeding from Samba towards Kathua. The driver of the car in question identified himself as Harpreet Singh @ Raju @ Happy whereas another person sitting in the car disclosed his name as Ranjeet

Singh @ Kaku. The Police Officials noticed a white coloured plastic bag lying under the feet of Ranjeet Singh, who disclosed that he had collected the said bag from Yaqoob Ali @ Lambu. The two persons sitting in the car further disclosed that the money lying in the bag was collected by them from their associate Yaqoob Ali in lieu of Heroin (Chitta). They further disclosed that they are heroin suppliers, working in association with the petitioner herein and that they had come to Bishnah to deliver the consignment of Heroin to Yaqoob Ali and to collect an amount of Rs. 16,71,520/- from Yaqoob Ali, whereupon they were in the process of proceeding back to Amritsar, Punjab. The Police Officials of Naka Party sent the docket containing the aforesaid information to the Police Station on the basis of which FIR No. 33/2023 for offences under Section 8/21/25/29 NDPS Act was registered by the Police.

3. During investigation of the case, both Harpreet Singh and Ranjeet Singh were subjected to personal search after complying with the provisions contained in Section 50 of NDPS Act. Two grams of heroin was recovered from possession of Ranjeet Singh whereas two more grams of heroin like substance was recovered from possession of Harpreet Singh. Cash amounting to Rs. 16,71,520/- was also recovered from the plastic bag lying in the car. The recovered heroin as well as the cash was seized on spot, whereafter samples of the seized heroin were prepared and sealed by the Executive Magistrate 1st Class, Ghagwal.
4. After conducting investigation of the case, it was found that accused Harpreet Singh and Ranjeet Singh had taken the consignment of

Heroin from petitioner Yugraj Singh for delivering the same to accused Yaqoob Ali at Samba. It was also found that accused Harpreet Singh and Ranjeet Singh had delivered 350-400 grams of heroin to accused Yaqoob Ali in lieu of cash amounting to Rs. 16,71,520/- and when they were returning towards Punjab in their vehicle, they were intercepted by the Police at the naka, whereafter the cash and heroin weighing two grams was recovered from the possession of each of the two accused. It was also found that accused Harpreet Singh, Ranjeet Singh, Yaqoob Ali and petitioner-Yugraj Singh are working in association with each other and are indulging in smuggling of narcotic drugs. During the investigation, accused Harpreet Singh and Ranjeet Singh are stated to have disclosed in the Police custody that the consignment of heroin which they had delivered to accused Yaqoob Ali was obtained by them from petitioner Yugraj Singh and they had to deliver the cash amounting to Rs. 16,71,520/- to the petitioner, who as per investigation of the case, happens to be the kingpin of the gang of smugglers, being the supplier of heroin.

5. The petitioner was taken into custody on 08.06.2023 and according to the prosecution, he made a disclosure statement that all the accused persons are involved in illegal and illicit trafficking and financing of narcotic drugs from one state to another. He also disclosed that the cash amount of Rs. 16,71,520/- that was recovered from possession of accused Harpreet Singh and Ranjeet Singh was to be used for purchasing more narcotic drugs. During investigation of the case, CDR(s) of the accused persons were collected and analysed, which established that all the accused were in continuous touch with each

other. It was found that petitioner Yugraj Singh is the main culprit, who frames the blueprint to smuggle Drugs/Heroin from Punjab to Jammu and Kashmir and other parts of the country. Thus, offences under Section 8/21/22/25/27-A/29 NDPS Act were found established against the petitioner and co-accused. Accordingly, challan was laid before the court of learned Additional Sessions Judge, Samba.

6. It appears that prior to filing of the challan, when offence under Section 27-A NDPS Act had not been added to the FIR, learned Additional Special Mobile Magistrate, Samba vide her order dated 27.04.2023 granted bail to accused Ranjeet Singh and Harpreet Singh, as only a small quantity of heroin was recovered from their possession. However, it appears that both these accused jumped the bail and absconded. The charge-sheet was, therefore, presented before the trial court in absence of accused Ranjeet Singh and Harpreet Singh and it appears that they have been proceed against in terms of Section 299 of Cr. P.C. It also appears that during the pendency of the challan, accused Yaqoob Ali has been granted bail by learned Additional Sessions Judge, Samba vide order dated 06.09.2024. However, the bail application of the petitioner Yugraj Singh has been dismissed by the learned trial court in terms of order dated 09.10.2024. It is pertinent to mention here that charges for offences under Section 8/21/22/25/27-A/29 NDPS Act stand framed against the accused persons including the petitioner herein in terms of order dated 14.08.2024 passed by the learned trial court.
7. The petitioner has sought bail on the grounds that there is no evidence against the petitioner and that he has been implicated on the basis of

disclosure statement made by co-accused and on the basis of alleged confession made by the petitioner before the Police Officials, which is inadmissible in evidence. It has been further contended that co-accused Yaqoob Ali has already been granted bail by the learned trial court, therefore, it was not open to the said court to decline a similar concession to the petitioner. Lastly it has been contended that the petitioner would abide by all the conditions that may be imposed upon him in case he is enlarged on bail.

8. In the reply filed by the respondents, besides reiteration of the facts of the prosecution case, it has been contended that the petitioner is involved in a heinous offence and bar contained in Section 37 of the NDPS Act is attracted to the present case, therefore, he is not entitled to grant of bail.
9. I have heard learned counsel for the parties and perused record of the case including record of the trial court.
10. So far as principles for grant of bail in a non-bailable offence are concerned, the same are more or less well settled on the basis of judicial precedents of the Supreme Court and of this Court. The factors required to be considered for deciding an application for grant of bail are stated as under:
 - a) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence.
 - b) Nature and gravity of the accusation.
 - c) Severity of the punishment in the event of conviction.
 - d) Danger of the accused absconding or fleeing if released on bail.

- e) Character, behaviour, means, position and standing of the accused.
- f) Likelihood of the offence being repeated.
- g) Reasonable apprehension of the witnesses being influenced.
- h) Danger of justice to be thwarted by grant of bail.

11. So far as offences under NDPS Act are concerned, in cases involving recovery of commercial quantity of the contraband as also in the cases in which the accused is alleged to have been involved in an offence under Section 27-A of the said Act are concerned, besides the aforesaid factors, at the time of considering a prayer for bail of the accused, the Court is also required to factor in the provisions contained in Section 37 of the NDPS Act. As per the provisions contained in the said section, before releasing an accused on bail, public prosecutor has to be given an opportunity to oppose the application and the Court has to be 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. Section 37 of NDPS Act is not complete bar to the grant of bail in a case where recovery of contraband drug falls under the parameters of commercial quantity or where accused is alleged to be involved in offence of financing illicit trafficking and harbouring offenders. It only provides that bail in such cases cannot be granted unless the prosecutor has been given an opportunity to oppose the application and the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that there is no likelihood of his committing any offence while on bail.

12. In the backdrop of aforesaid legal position, let us now advert to the facts of the present case. Allegation against the petitioner is that he is involved in the offence of financing illicit traffic and harbouring offenders, as defined in Section 27-A of NDPS Act. The provisions contained in Section 37 of the NDPS Act are attracted to the case, though the recovery of heroin that has been effected from the co-accused falls under the category of small quantity. The contention of the petitioner is that there is no material on record of the charge-sheet which can be converted into legal evidence for connecting him with the alleged crime.
13. In the above context, if we have a look at the material collected by the Investigating Agency during investigation of the case, it is revealed that there is material on record to show that two grams of heroin has been recovered from the possession of each of the co-accused Harpreet Singh and Ranjeet Singh. Besides this, cash in the amount of Rs. 16,71,520/- has also been recovered from them. To this effect, the statements of the Police witnesses recorded under Section 161 of Cr. P.C. are on record of the charge-sheet. Besides this, there are seizure memos also on record of the charge-sheet. Perusal of the charge-sheet further reveals that the Investigating Agency has prepared a disclosure memo, which appears to have been signed by petitioner herein. In the said disclosure memo, the petitioner has admitted that he runs a network of which co-accused Harpreet Singh, Ranjeet Singh and Yaqoob Ali are members. In the disclosure memo, the petitioner is stated to have disclosed that he is supplier of heroin in Jammu/Samba areas and that he had handed over the consignment of heroin to accused Harpreet

Singh and Ranjeet Singh for its delivery to accused Yaqoob Ali. He has further admitted in the disclosure memo that he had handed over a consignment of 350-400 grams of heroin to accused Yaqoob Ali in lieu of cash of Rs. 16,71,520/, but on their way back, accused Harpreet Singh and Ranjeet Singh were intercepted by the Police at Tapyal Naka. There are also statements of the Police witnesses who were present at the Naka to the effect that accused Harpreet Singh and Ranjeet Singh had disclosed before the said Police Officials that they had brought the consignment of heroin from the petitioner for its delivery to accused Yaqoob Ali and after its delivery they had collected cash amount of Rs. 16,71,520/ from the said accused which they had to deliver to the petitioner.

14. So far as aforesaid disclosure statement of petitioner and statements of the Police witnesses, wherein they have deposed about the details narrated by accused Harpreet Singh and Ranjeet Singh showing involvement of petitioner is concerned, the same are prima facie hit by provisions contained in Section 26 of the Evidence Act. As per the said provision, the confession made by any person while he is in custody of police officer, unless it is made in immediate presence of a Magistrate is in-admissible in evidence. In the present case, the petitioner has not made the disclosure statement in presence of a Magistrate, but the same has been recorded by a Police Official while he was in custody. Even provisions contained in Section 27 of the Evidence Act, which make the disclosure statement made by an accused before the Police officer while in custody admissible in evidence will not come to the rescue of the prosecution case, as the

conditions stipulated in the said provision are not satisfied in the instant case. As per Section 27 of the Evidence Act, unless the disclosure made by an accused leads to discovery of a fact, the same does not become admissible in evidence. In the present case, no recovery has been effected pursuant to the disclosure statement made by petitioner. Thus, his disclosure statement is prima facie hit by Section 26 of Evidence Act, and the same appears to be in-admissible in evidence.

15. So far as details narrated by the co-accused to the Police Officials about involvement of the petitioner are concerned, the same are also hit by provisions of Section 26 of the Evidence Act and are in-admissible in evidence. The Supreme Court in case titled as **Tofan Singh vs. State of Tamil Nadu** reported in **2021 (4) SCC 1** has held that *confessional statement made by an accused against co-accused before Police Official is in-admissible in evidence*. Again this Court in case titled as **Rayees Ahmad Dar vs. UT of J&K** (Bail App No. 05/2022) decided on 21.05.2022 has held that *statement of a co-accused while he was in Police Custody in the presence of Police Officials is inadmissible in evidence*. Thus, even the details about involvement of petitioner in the alleged crime deposed to by the co-accused to the Police Officials are not enough to implicate the petitioner.
16. The only material that connects the petitioner to the alleged crime is the CDR, which has been collected by the Investigating Agency during the investigation of the case. As per the analysis of the CDR, it appears that the petitioner was in touch with the co-accused during the

relevant period. The question arises as to whether the same would be sufficient to prima facie hold the petitioner guilty of having committed offence under Section 27-A of NDPS Act. In the opinion of this Court, CDR details showing contact between the petitioner and the co-accused, without there being any voice recording relating to conversation between them, may not be sufficient to convict the petitioner for offence under Section 27-A of NDPS Act, though it raises a suspicion about his involvement in the alleged crime.

17. In the face of the aforesaid nature of material on record against the petitioner, it can safely be stated that there are reasonable grounds to believe that the petitioner is not guilty of offence under Section 27-A of NDPS Act. Thus, he has been able to carve out a prima facie case for grant of bail.
18. The respondents have not placed on record any material to show that the petitioner has been involved in similar offences in the previous past. Though it has been alleged that the petitioner has been indulging in trafficking of illicit drugs, yet no details in this regard have been furnished by the respondents. Thus, it cannot be stated that the petitioner, if enlarged on bail, is likely to commit any offence while on bail. Apart from this co-accused, Yaqoob Ali has already been enlarged on bail by the learned trial court. Therefore, on the ground of parity also, the petitioner is entitled to grant of bail.
19. For the foregoing reasons, the instant bail application is allowed and the petitioner is admitted to bail, subject to following conditions.

- i. That he shall furnish two solvent sureties to the tune of Rs. 1,00,000/- each to the satisfaction of learned trial court and personal bond of the like amount.
 - ii. That he shall not make any attempt to contact or influence any of the prosecution witnesses during trial either physically or through any other mode.
 - iii. That he shall appear before the learned trial court on each date of hearing.
 - iv. That he shall not indulge in any similar offence.
 - v. That he shall surrender his passport, if any, before the learned trial court and shall not leave the country without permission of learned trial court.
20. Anything said in the order shall not be taken as expression of opinion on merits of the case.
21. **Disposed of along with the connected applications.**

(SANJAY DHAR)
JUDGE

Jammu
25.03.2025
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.