

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App No.20/2024

MOHAMMAD SHAFI GOJAR ... PETITIONER(S)

Through: - Mr. Parvaiz Wani, Advocate.

Vs.

UT OF J&K & ANOTHER ...RESPONDENT(S)

Through: - Mr. Nauman Idrees Malik, GA.

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

ORDER(ORAL)

06.05.2025

1) The petitioner has filed the instant application seeking bail in a case arising out of FIR No.27/2022 for offences under Section 8/20, 29 and 27-A of NDPS Act registered with Police Station, Lalpora Kupwara, which is stated to be pending before the Court of Principal Sessions Judge, Kupwara. The petitioner has sought bail on medical grounds.

2) It seems that the petitioner had approached the trial court for grant of bail on medical grounds but in terms of order dated 31.10.2023 passed by the said court, his prayer has been declined on the ground that commercial quantity of narcotic drugs stands recovered from the possession of the petitioner and, as such, embargo as laid down in Section 37 of the NDPS Act is attracted to his case which disentitles him to the grant of bail.

3) The respondents have contested the bail application by filing objections thereto, in which it has been submitted that charas weighing 12

kgs and an amount of Rs.5,64,000/ was recovered from the possession of the petitioner. Thus, according to the respondents the petitioner is involved in a very serious offence and he cannot be granted bail

4) It seems that this Court, vide order dated 07.06.2024, directed Incharge Superintendent District Jail, Kupwara, to get the petitioner examined by a specialist doctor and to furnish report about his current health status. Pursuant thereto, Superintendent District Jail, Kupwara, has furnished the medical report of the petitioner.

5) As per the medical report, the petitioner has a long history of lower back pain with severe radiolopathy and bilateral femur pain. The extracts of the medical report are reproduced as under:

“With all due respect it is to inform you that the above mentioned accused has a long history of lower back pain which with sever radiolopathy and bilateral femur pain, frequency in micturition, for that accused was referred to SDH, Kupwara, for both ortho as well as surgical consultation, where the doctor examined and investigated him and put him on conservative treatment and advised him for follow up on monthly basis. Despite long period of medication, the accused has no relief in symptoms and is dependent on other jail inmates to do his daily activities because of his old age. Currently he is on oral medication for 1 month.”

6) I have heard learned counsel for the parties and perused material on record.

7) From a perusal of the medical report submitted by the Medical Officer, District Jail, Kupwara, it is clear that the petitioner is suffering from severe ailment and despite medication, he is not showing any symptoms of improvement. It is further recorded in the medical report that the petitioner is dependent on other jail inmates even for his daily chores due to the ailment and because of his old age.

8) It is not in dispute that the petitioner is aged about 71 years. Keeping in view the medical report of the petitioner quoted hereinbefore and his advanced age, his further incarceration in jail may lead to complications relating to his health and may even endanger his life. The fact that the petitioner is dependent even for daily chores on others makes it difficult even for the jail authorities to manage the petitioner.

9) The learned Principal Sessions Judge, Kupwara, while rejecting bail application of the petitioner has got swayed by the heinousness of the offence alleged to have been committed by the petitioner and has, without appreciating the seriousness of the ailment with which the petitioner is suffering, observed that he is being treated well inside the jail.

10) There is no quarrel with the proposition that in cases involving commercial quantity of contraband, accused cannot be admitted to bail unless the conditions mentioned in Section 37 of the NDPS Act are fulfilled. This Court in the case of **Sajad Ahmad Bhat v, UT of J&K, 2022 SCC Online J&K 453**, has, after noticing the provisions of Section 37 of the NDPS Act, held that the said provisions come into play only when bail of a person accused of an offence involving commercial quantity of contraband is being considered on merits and the limitations contained therein would not come into play when bail is to be granted on humanitarian grounds like medical grounds. It has been further held that in such cases the powers of the High Court under Section 439 Cr.P.C. are not curtailed and as such, the provisions contained in Section 37 of the NDPS Act do not act as a blanket ban on the power of the High Court under Section 439 Cr.P.C.

11) In view of the aforesaid position of law and keeping in view the deteriorating health condition of the petitioner as has been noted in the medical report submitted by the jail authorities, a case for grant of temporary bail on medical grounds in favour of the petitioner is made out.

12) Accordingly, the petitioner is admitted to bail on medical grounds for a period of two months from the date he is released from custody, subject to the following conditions:-

- (i) *That he shall furnish bond in the amount of Rs. 1,00,000/ (rupees one lac) with one surety of the like amount to the satisfaction of the trial court;*
- (ii) *That he shall appear before the trial court on each date of hearing;*
- (iii) *That he shall not leave the territorial limits of Union Territory of J&K without prior permission of the trial court;*
- (iv) *That he shall not intimidate or tamper with prosecution witnesses/evidence.*
- (v) *That he shall use the concession of bail for the purpose of his treatment and shall surrender before the trial court upon expiry of the period of bail.*

13) The bail application shall stand **disposed** of.

14) A copy of this order be sent to the trial court.

(SANJAY DHAR)
JUDGE

Jammu
06.05.2025
"Bhat Altaf-Secy"

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No