

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 12.11.2025

Pronounced on: 14.11.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

Bail App No.156/2025

JAVAID AHMAD BHAT

...PETITIONER(S)/APPELLANT(S)

*Through: - Mr. Wajid Mohammad Haseeb,
Advocate.*

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - Mr. Ilyas Nazir Laway, GA.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has invoked jurisdiction of this Court under Section 483 of BNSS seeking bail in a case arising out of FIR No.58/2024 for offences under Section 8/21 of NDPS Act registered with Police Station, Srigufwara, which is stated to be pending before the Court of Special Judge (NDPS Cases), Anantnag (hereinafter referred to as "the trial court").

2) As per case of the prosecution, on 14.07.2024, a Nakah was established by a police party of Police Station, Srigufwara, at Darkhan Crossing. During Naka checking, a

vehicle bearing No.JK03J-0772 (Baleno), was proceeding from Poshkreeri towards Srigufwara. The driver of the vehicle, on seeing the police party, attempted to flee from the spot but he was apprehended. The vehicle was subjected to search, whereupon 11 bottles of Omrex-T (100 ml each) with label Codeine Phosphate were recovered from the bonnet of the vehicle. The driver of the vehicle who was identified as Javaid Ahmad Bhat, the petitioner herein, could not furnish any justification for possession of the aforesaid substance. The recovered substance was seized along with the vehicle in question and the petitioner was taken into custody.

3) During investigation of the case, the samples were drawn from the bottles of Omrex-T and the same were sealed in presence of the Judicial Magistrate, 1st Class, Bijbehara. The samples were sent to FSL for chemical analysis and as per report of the FSL, Codeine Phosphate Chlorpheniramine Maleate and Triprolidine Hydrochloride was detected in the sample. After investigation of the case, offences under Section 8/21 of NDPS Act were found established against the petitioner and the challan was laid before the trial court.

4) Vide order 05.10.2023, learned trial court framed charges for offences under Section 8/21 of NDPS Act against the petitioner. Vide order dated 17.07.2025, the application filed by the petitioner for grant of bail was dismissed by the

trial court, primarily, on the ground that the petitioner is involved in commission of offence relating to possession of commercial quantity of contraband substance.

5) The petitioner has sought bail on the grounds that he has not committed any offence, as such, his detention is unreasonable and unjustified. It is being contended that the perusal of the challan and evidence recorded so far before the trial court does not make out a case against the petitioner and from a perusal of the statements of the prosecution witnesses recorded so far, it can safely be stated that the petitioner is not guilty of the offences for which he has been charged. It has also been contended that only one bottle, out of 11 bottles of Omrex-T alleged to have been recovered from the possession of the petitioner has been sent for chemical analysis, as such, there is no evidence on record to show that the remaining 10 bottles of Omrex-T were containing Codeine Phosphate. Thus, at best the petitioner can be alleged to have committed the offence involving possession of intermediate/small quantity of contraband substance, as such, the provisions contained in Section 37 of the NDPS Act are not attracted to his case.

6) The respondent-UT has resisted the bail petition by filing objections thereto. In its objections, the respondent-UT, besides narrating the allegations made in the charge

sheet against the petitioner, has submitted that the petitioner is involved in a heinous and grave offence against the society at large and, therefore, he does not deserve the concession of bail. It has been submitted that the grounds mentioned in the application do not carve out a case for grant of bail. It has been also contended that offence in which the petitioner is involved is running harshly against the larger public interest and, as such, a balance deserves to be struck between individual interest and public interest wherever they are pitted against each other, therefore, the petitioner does not deserve the concession of bail. It has also been contended that the petitioner has agitated false and fabricated grounds in order to defeat the process of law, as such, his bail application deserves to be rejected.

7) I have heard learned counsel for the parties and perused record of the case.

8) While granting or refusing bail to an accused, the Court has to take into account the factors like prima facie or reasonable ground to believe that the accused has committed the offence, nature and gravity of the charge, severity of punishment in the event of conviction, danger of the accused absconding or fleeing, if released on bail, character, behavior, means, position and standing of the

accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with and the danger of course of justice being thwarted by grant of bail. When it comes to the offences punishable under NDPS Act, particularly those which involve possession of commercial quantity of contraband substance, the court has also to keep in view the conditions stipulated in Section 37 of the NDPS Act. As per the said provision, before a person accused of committing an offence involving commercial quantity of contraband substance is released on bail, the Public Prosecutor has to be given an opportunity to oppose the application and the court has to satisfy itself that there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

9) According to the petitioner, the evidence led by the prosecution, prima facie, goes on to show that he is not guilty of offence relating to possession of commercial quantity of contraband drugs. In this regard, learned counsel for the petitioner has taken me through the statements of some prosecution witnesses, that have been recorded during trial of the case

10) It has to be borne in mind that at the stage of considering bail application of an accused, the evidence led

by the prosecution cannot be meticulously examined. It is only if from a cursory look at the evidence recorded during trial of the case, it is possible to frame an opinion that accused is not guilty of offence involving commercial quantity of drugs that he can be enlarged on bail. If such an opinion can be framed only after meticulous examination and appreciation of the evidence on record, the same is to be left for determination at the final stage of the case and not while considering a plea for bail of the accused.

11) Learned counsel for the petitioner has argued that the evidence on record particularly the statement of the Executive Magistrate would show that only one bottle out of 11 seized bottles of Omrex-T, that were alleged to have been recovered from the possession of the petitioner, has been sent for FSL chemical analysis, which is clear from the evidence led by the prosecution. It has been submitted that in the face of this position, there is nothing on record to suggest that in remaining 10 seized bottles of Omrex-T, were containing Codeine Phosphate. Thus, at best, it can be stated that the petitioner was found to be in possession of one bottle of Omrex-T containing 100 ml of Codeine Phosphate mixture. On this basis, it is being contended that there are reasonable grounds for believing that the petitioner

in not guilty of offence of possessing commercial quantity of contraband drugs.

12) Learned counsel appearing for the respondent has contended that it was not necessary for the Investigating Agency to send all the 11 recovered bottled of Omrex-T to FSL for their chemical analysis as similar solution was found in all the 11 bottles. It has been contended that the chemical analysis of one recovered bottle has reflected presence of Codeine in it and the same can be taken as representative sample of all the recovered bottles. To support his contention, the learned counsel has relied upon the judgment of the Supreme Court in the case of **Vijendrajit Ayodhya Prasad Goel vs. State of Bombay**, AIR 1953 SC 247.

13) If we have a look at the evidence on record, that has been led by the prosecution before the trial court, it is clear that only one bottle, out of seized 11 bottles of Omrex-T containing 100 ml solution each, has been sent to FSL for chemical analysis and as per the result, the said bottle was found to contain Codeine. The question that arises for determination is as to whether the sample sent by the Investigating Agency to the FSL in the present case qualifies to be the representative sample of the recovered bottles. In

this regard, it is to be noted that in the seizure memo, the batch number and the nature of solution contained in the recovered bottles is not mentioned. Had it been a case where 11 bottles recovered from the possession of the petitioner pertained to same batch, one could have inferred that the sample sealed by the Investigating Agency and sent to the FSL for chemical analysis, is representative sample of the recovered bottles of Omrex-T. But such is not the case as there is no material on record to suggest that the recovered bottles were bearing the same batch number. The ratio laid down by the Supreme Court in **Vijendrajit's** case (supra), therefore, may not apply to the facts of the present case, as in the said case, there was evidence on record to show that all the bottles recovered by the police contained the same stuff. In the present case, the evidence on record does not, prima facie, show that the recovered bottles pertained to the same batch, which could have led to inference that all the recovered bottles contained the same stuff.

14) In the face of aforesaid discussion, prima facie, it appears that out of 11 recovered bottles of Omrex-T, only one bottle sent to FSL for chemical analysis was proved to contain Codeine. There is no opinion of the FSL expert in respect of other 10 recovered bottles. From this, it appears that there are reasonable grounds for believing that the

petitioner is not guilty of offence of possession commercial quantity of contraband drugs.

15) The respondents have not placed on record any material to show that the petitioner has any previous history of having indulged in the trade of illicit drugs nor have they placed on record any material to show that in case he is admitted to bail, he is likely to commit similar offences. Thus, the petitioner has succeeded in carving out a prima facie case for grant of bail in his favour.

16) Apart from the above, a perusal of the trial court record shows that six witnesses out of 12 listed witnesses have already been examined. The petitioner has been in custody for the last about more than a year, as such, his further incarceration would not serve any fruitful purpose. On this ground also, the petitioner is entitled to bail.

17) For the foregoing reasons, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

- (i) *That he shall furnish personal bond in the amount of Rs.50,000/ with two sureties of the like amount to the satisfaction of the learned trial court;*
- (ii) *That he shall appear before the learned trial court on each and every date of hearing.*

- (iii) *That he shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;*
- (iv) *That he shall not intimidate or tamper with prosecution witnesses/evidence.*
- (v) *That he shall not indulge in similar activities;*

18) Observations made hereinabove shall remain confined to the decision of the instant application only and shall not be construed as expression of an opinion on the merits of the case.

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

SRINAGAR

14.11.2025

"Bhat Altaf-Secy"

*Whether the **Judgement** is reportable:*

Yes/No

