

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

CRM(M) No. 116/2025

Mohammad Abass Magray

..... Appellant/petitioner(s)

Through: -

*Mr. Syed Faisal Qadiri, Sr. Advocate with
Ms. Mariya Amin, Advocate.*

V/s

Union Territory Through Police Station Anantnag.

..... Respondent(s)

Through: -

Mr. Mubashir Malik, Dy.AG.

CORAM:

HON'BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE

(ORDER)

07.03.2025

1. Mr. Mubashir Malik, learned Dy. AG appears in the matter on behalf of the respondent. Response, if any shall be filed by the next date of hearing.
2. Heard the learned counsel for the applicant-petitioner in respect of his prayer for grant of interim relief in applications bearing CrIM Nos. 244/2025 and 245/2025. It is *inter alia* submitted by the learned counsel for the applicant-petitioner that the FIR bearing No. 222/2010 came to be registered with the Police Station Anantnag way back on 31.05.2010 under Section 6/13 of Drugs and Cosmetics Act and 3/7 of Essential Commodities Act in which the petitioner came to be bailed out by the competent Court on 01.06.2010. That the investigation in the case continued till 22.02.2025 for a period of about 15 years when the Police Station concerned presented the final report in terms of Section 173 Cr.PC corresponding to Section 193 of BNSS before the

learned Special Judge designated under NDPS Anantnag. The learned trial court through its order dated 22.02.2025, passed on the final report/challan returned the same as being not in accordance with law. It has been pin pointed by the learned trial court in its order that the investigation in the case which started initially under the offences falling under Cosmetics and Drugs Act and Essential Commodities Act continued to be going on for a period of fifteen years and at the fag end of the investigation, offence under 8/21 of the NDPS Act came to be added in case FIR.

3. The learned counsel submits that the registration of the case FIR in question as well as the final report culminating from the same appears to be the gross and patent abuse of process of law deserving to be quashed to meet the ends of justice in view of the provisions of the law as contained under 482 Cr.PC corresponding to 528 of BNSS. He further contends that the petitioner-accused was bailed out by the competent Court on the next day of registration of FIR and arrest and now he cannot be re-arrested after a long gap of fifteen years in the same case FIR under a different offence.
4. In the interim applications, prayer has been made for staying the operation of the impugned FIR as well as the grant of pre-arrest bail in favour of the petitioner in the offence under 8/21 NDPS Act.
5. Considered the submissions of the learned counsel for the petitioner-accused. Learned State Counsel seeks time for filing his detailed objections to the interim application which is granted.

6. The allegation against the petitioner-accused is that thirty-five bottles of manufactured drug of 100 ML content each containing a narcotic substance Codine Phosphate in mixture came to be recovered and seized from him. As per the position of law standing at the time of the registration of the FIR, the actual content of the narcotic substance in a mixture was to be considered for the purpose of the computation of the quantity whether being commercial or otherwise. It is undisputed that as per the said position of the law, the alleged recovered drug falls within an ambit of small quantity. In the opinion of the Court, the arrest of the petitioner-accused at this stage in the offence under Section 21 NDPS Act despite his having been already arrested in the same FIR on 31.05.2010 will tantamount to gross deprivation of his fundamental right to life and liberty. The Investigation Officer has not felt it necessary to arrest the petitioner-accused during a period of fifteen years subsequent to the addition of the offence under NDPS Act in the case FIR. So it is supposed that there is nothing on record to show that the petitioner accused if admitted to bail will jump over the concession of the same.

7. Accordingly having regard to the law on the subject of bail, the petitioner-accused is admitted to interim pre-arrest bail with a direction to the SHO Police Station, Anantnag, that he shall in the event of the arrest of the petitioner-accused in case of FIR No. 222/2010 in the offence under 8/21 NDPS Act release him from custody subject to his furnishing of surety and personal bonds to his satisfaction to the tune of Rs. 20,000/- each. This pre-arrest bail order

shall be subject to the condition that the petitioner-accused shall remain punctual at the trial in case of presentation of any final report and shall not cause any threat, intimidation on the prosecution witness so as to dissuade them from making their statements before the Court.

8. Mr. Mubashir Malik learned Dy. AG is directed to ensure the production of the case file for perusal of this Court on the next date of hearing.

9. List on 16.04.2025.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
07.03.2025
"Shaista-PS"

