

**IN THE HON'BLE HIGH COURT OF J&K AND LADAKH
AT SRINAGAR**

Bail App No. 165/2023

Reserved on: 10.11.2025

Pronounced on: 21.11.2025

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1. Shahnawaz Ahmad Dar aged 27 years
S/o Farooq Ahmad Dar R/o Tullakhan
Bijbehara Anantnag, Kashmir, through
his grandfather Mohammad Jabbar
Dar aged 84 years S/o Ab. Satar Dar
R/o Tulkhan Bijbehara Anantnag,

...Appellant(s)/Petitioner(s)

Through: Mr. Gowhar Majid Dalal, Advocate with
Mr. Ibrahim Mehraj, Adv.

Vs.

U.T of J&K through SHO Police Station Bijbehara,
Anantnag Kashmir.

Respondent(s)

Through: Mr. Ilyas Nazir Laway ,GA

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

1. The present application has been filed by the petitioner seeking enlargement on bail in a case arising out of FIR No. 292 of 2021 registered under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985. The allegation against the petitioner is that he was found in possession of a contraband of *commercial quantity* during a naka/checking operation conducted by the police. Upon completion of investigation, the challan/charge-sheet

was produced before the learned Trial Court, where the trial is presently in progress.

2. As per the prosecution, the bottles recovered from the vehicle of petitioner were seized and the samples were drawn, which were later on sent to FSL for expert opinion and the opinion was also furnished by the FLS whereby it was confirmed that the bottles were containing Chlorine Phosphate.
3. During the course of trial, out of a total of thirteen (13) prosecution witnesses, ten (10) witnesses including the complainant, the Executive Magistrate, and the Forensic Science Laboratory (FSL) expert have already been examined. The remaining witnesses are yet to be examined. However, in the petition as originally filed, the petitioner stated that only one prosecution witness had been examined. Despite the subsequent progress in the trial, the petitioner has not taken steps to amend the petition to reflect the correct status of examination of witnesses, which ought to have been done before the Court.
4. The petitioner, on the other hand, disputes the legality and manner of recovery and alleges non-compliance of mandatory provisions under the NDPS Act, NDPS Rules, Standard Operating Procedures issued by the Home Department, and the guidelines notified under GSR 899(E) dated 23.12.2022. The petitioner further contends that he has been in custody for more than four years, and therefore seeks bail on humanitarian as well as legal grounds.
5. The respondent opposes the grant of bail by placing reliance upon the statutory bar contained in Section 37 of the NDPS Act and submits

that in a case involving commercial quantity, the petitioner cannot be released unless the twin conditions under Section 37 stand satisfied.

SUBMISSIONS ON BEHALF OF PETITIONER:

6. Learned counsel Mr. Gowhar Majid Dalal, appearing on behalf of the petitioner, submitted that the entire recovery and seizure proceedings stand vitiated as the Investigating Officer has failed to comply with the mandatory safeguards prescribed under Sections 42, 50, 52, 52A and 57 of the NDPS Act, the NDPS Rules, 1985, the SOP issued by the Home Department, J&K in 2017, as well as the guidelines notified on 23.12.2022 vide GSR 899(E). This non-compliance, according to learned counsel, goes to the root of the prosecution case.
7. Learned counsel submits that the prosecution story is that of a *chance recovery*, whereas PW-6, the Executive Magistrate, has categorically stated in his deposition that he was informed beforehand by the police to accompany them for naka duty. This, it is urged, clearly indicates that it was a case of *prior information*, in which event strict compliance with Section 42 was mandatory. The contradictory stance taken by the prosecution demolishes the very foundation of its case.
8. He further draws the attention of this court, to the testimony of PW-1, who admitted the recovery memo (Ex. PA-1/A) to be correct. However, the said memo contains the FIR number even though the recovery is said to have been effected before registration of the FIR. This inconsistency, according to the learned counsel, indicates that the recovery memo was prepared later and not at the spot, thereby creating a serious doubt about the authenticity of the alleged recovery.

9. PW-11, the FSL expert, has deposed that although the seizure was affected on 07.12.2021 and the samples were produced before the Magistrate on 08.12.2021, those were received in the FSL only on 20.12.2021. No explanation has been offered for this 12-days delay. It is submitted that this unexplained gap makes the sample handling and chain of custody completely doubtful.
10. Learned counsel contends that PW-8 has narrated an entirely different version by stating that the seized items were brought from the shop of co-accused Ishaq Shah and Waseem Shah. Such major contradictions, affect the very credibility of the prosecution case.
11. It is argued that no efforts were made to associate independent witnesses, which is contrary to Section 100 CrPC and settled practice under the NDPS Act. This omission further weakens the prosecution case.
12. Learned counsel submits that when the recovery itself is doubtful, the statutory presumption of conscious possession does not operate. Therefore, the embargo under Section 37 stands diluted, and the petitioner has shown reasonable grounds to believe that he is not guilty.
13. It was contended that petitioner has been in custody for more than four years, having undergone more than one-third of the minimum sentence prescribed. It is submitted that continued detention violates Article 21, particularly when prosecution evidence suffers from serious infirmities.

14. Out of 13 witnesses, 10 have already been examined. Hence, there is no likelihood of the petitioner tampering with evidence or influencing witnesses.

SUBMISSIONS ON BEHALF OF RESPONDENTS

15. **Per contra, Mr. Ilyas Laway**, Learned Government Advocate, opposing the bail application, submitted that the factum of recovery of commercial quantity of contraband from the possession of the petitioner is not denied. The petitioner only questions the manner of recovery. It is argued that such a plea pertains to appreciation of evidence and cannot be gone into at the stage of bail.
16. Since the case involves *commercial quantity*, the statutory bar under Section 37 is fully applicable. Unless the Court is satisfied that the petitioner is not guilty of the offence and is not likely to commit any offence while on bail, the petitioner cannot be enlarged on bail. It is submitted that such satisfaction cannot, at this stage, be recorded.
17. Mr. Laway, learned GA submits that the depositions of the witnesses examined so far substantiate the prosecution version and prima facie indicate the involvement of the petitioner. Hence, reasonable grounds to believe that the petitioner is not guilty, do not exist.
18. It is contended that the petitioner seeks to convert the bail proceeding into a mini-trial by relying on alleged contradictions or procedural lapses. Such an exercise is beyond the scope of consideration at this stage. The trial court alone can appreciate the evidence in detail.
19. It is submitted that the Supreme Court has consistently held that prolonged custody, by itself, is not a ground for granting bail in cases involving commercial quantity.

Moreover, in the present case, the trial is proceeding expeditiously and 10 out of 13 witnesses have already been examined.

20. Learned counsel for respondent, submits that offences under the NDPS Act pose a serious threat to society, and release of the petitioner at this stage may adversely affect the trial and may lead to repeated violation.

LEGAL ANALYSIS:

21. Having Heard Learned Counsel for the parties at length and perused the material on record, it is evident that the alleged recovery pertains to *commercial quantity*. Consequently, the statutory bar prescribed under Section 37 of the NDPS Act becomes applicable and the accused can be released on bail only if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail as per section 37(1)(b)(ii) of the NDPS Act. For Facility of reference, it would be apt to reproduce section 37 of the Act which reads as follow:

“37. Offences to be cognizable and non-bailable. --

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for ¹[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is 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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

22. Further, the expression “reasonable grounds” used in Section 37(1)(b) (ii) has been consistently interpreted by Hon’ble Apex Court as credible and plausible grounds that would reasonably persuade the Court to believe that the accused is not involved in the alleged offence. The Hon’ble Supreme Court in case titled as **Narcotics Control Bureau Versus Mohit Aggarwal** reported as **2022 SCC OnLine SC 891** has observed as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the chargesheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act”

23. The material on record makes it evident that the accused has nowhere disputed the alleged recovery of contraband from his possession. This Court finds no such material produced by the petitioner that could persuade it to conclude that there exist reasonable grounds to believe that he is not guilty, especially in view of the fact that burden placed on the accused under this provision is a heavy and much stricter than the normal rules of bail.
24. This Court is equally mindful of the petitioner’s plea that petitioner has been in custody for more than four years, having already undergone more than one-third of the minimum sentence prescribed, therefore, in light of such prolonged incarceration the continuance of the detention of accused would impinge Article 21. However, the record reveals that as many as ten prosecution witnesses out of thirteen have already been examined, and the trial is now at an advanced stage. The right under Article 21 operates subject to the ‘procedure established by law’, and Section 37 of the NDPS Act

constitutes such valid and stringent statutory procedure. Where the Legislature, in its wisdom, has mandated the recording of specific satisfaction before granting bail in cases involving commercial quantity, the Court cannot dilute or bypass these conditions on general notions of delay or liberty. Consequently, the continued custody of the petitioner, in the absence of satisfaction of the twin conditions, cannot be characterized violative of Article 21 of Constitution of India.

25. While the factor of prolonged incarceration is undoubtedly a relevant consideration in the adjudication of a bail application, such consideration cannot, in itself, furnish an adequate or independent ground for the grant of bail in cases governed by the rigors of Section 37 of the NDPS Act. The statutory restrictions imposed under Section 37 are mandatory in nature, and the Court is bound to record its satisfaction regarding the twin requirements—first, that there exist reasonable grounds for believing that the accused is not guilty of the alleged offence, and second, that he is not likely to commit any offence while on bail.
26. The Hon'ble Apex Court in *Union of India v. Ajay Kumar Singh @ Pappu CRL No. 2351 of 2023* decided on march 2023 reiterated that in cases where an accused is charged with offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) involving commercial quantity of narcotic substances, it is mandatory for the Court to apply and satisfy the twin conditions prescribed under Section 37 of the NDPS Act while adjudicating a bail application.

For facility of reference, the relevant portion of the judgment is reproduced herein below:

“...it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

27. Further, the Hon’ble Supreme Court in case titled as **State by the Inspector of Police versus B. Ramu** reported as **2024 SCC OnLine SC 4073** has held as under:

“12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have mandatorily recorded satisfaction in terms of the rider contained 37 of the NDPSA Act.”

28. Therefore, mere prolonged detention, without satisfaction of these pre-conditions, cannot be invoked to dilute or bypass the express legislative mandate. Accordingly, prolonged incarceration alone does not confer any entitlement to bail in derogation of the statutory embargo.
29. Recently, the Hon’ble Supreme Court in case titled **Union of India versus vigin k. Varghese** reported as **2025 SCC OnLine SC 2440** has observed that the High Court’s reliance on “prolonged incarceration” and the “likelihood of delay in trial” was insufficient to override the statutory bar on granting bail in cases involving commercial quantity under the NDPS Act. For ease of reference, the relevant paragraph is reproduced as under:

“We have perused the impugned orders dated 22.01.2025 and 12.03.2025. Both orders proceed essentially on four planks, absence of knowledge of the cocaine to the respondent in the imported consignment, absence of antecedents, length of custody and perceived delay in conclusion of the trial, and a consequent conclusion that there exist reasonable grounds to believe that the accused is not guilty of the offence.

At this stage, two features stand out. The High Court’s conclusion that there is no material to show that the applicant had any knowledge of the cocaine in the consignment has been arrived at without discussion of the statements of the respondent and circumstances relied upon by the prosecution, including the assertion that the respondent had placed the orders for import, controlled the logistics chain, coordinated with the overseas supplier, and was present when the consignment was opened. The High Court has not examined whether those circumstances, taken at face value for the limited purpose of bail, could prima facie indicate conscious control or involvement sufficient to attract the presumption of culpable mental state indicated under Section 35 of the NDPS Act.

16. Further, while granting bail, the High Court recorded that there were no antecedents against the applicant. The material before this Court includes the Union’s assertion that the respondent had already been apprehended in connection with an earlier seizure of approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine allegedly imported through the same channel only days before the present seizure.

That assertion is neither noticed nor answered in the impugned orders.

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 operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance."

30. The petitioner has drawn attention of this Court to various alleged infirmities in the prosecution case, including alleged procedural lapses, discrepancies in the documents at the relevant time, delay in conducting the trial, and contradictions in the statements of material witnesses.
31. The issues related to the evaluation of evidence and the credibility of witnesses, are the matters that can be properly decided by the Trial Court only, as it is well-settled law that at the bail stage, the constitutional Court is not required to decide the question of guilt or innocence. The scope of consideration is limited, and these issues cannot be a basis for granting bail at this stage.

32. The Hon'ble Supreme Court in case titled as **Ms. Y Versus State of Rajasthan and anr. reported as 2022 livelaw SC 384** has held as under:

“10. At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial.”

33. Therefore, this Court finds no merit in the petitioner's reliance on alleged discrepancies, procedural lapses or contradictions in the material collected by the prosecution. Such aspects relate to the appreciation of evidence and the assessment of witness credibility, which are matters to be examined during the course of trial.
34. Furthermore, this Court cannot lose sight of the wider societal implications of releasing an accused from whose possession commercial quantity of narcotic drugs has been recovered. Offences of this nature are not confined to the individual lives but impacts society at large. Drug traffickers inflict a deadly blow on the youth and are a hazard to society. Their activities not only destroy individual lives but also undermine public health, erode family structures, fuel secondary crimes, and threaten communities. Granting bail in such cases without strict compliance with the statutory conditions creates a real and tangible risk of the accused returning to the same network and re-offending. The social cost of permitting such offenders to re-enter the community, even temporarily, is immeasurable.
35. The legislative intent behind the NDPS Act is precisely to shield the public from the grave dangers posed by drug traffickers and to prevent

the recurrence of offences that carry devastating consequences for present and future generations.

36. The Hon'ble Supreme Court in case titled as **Mohd Zahid versus State through NCB reported as LL 2021 SC 722** has observed as under:

“No leniency should be shown to an accused who is found to be guilty for the offence under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. Those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable. Such accused cause deleterious effects and deadly impact on the society.”

37. In light of the above, this Court finds that the petitioner has failed to satisfy the mandatory requirements of Section 37 of the NDPS Act. The statute casts a strict obligation upon an accused charged with offences involving commercial quantity, and the Court must be clearly convinced that there exist reasonable grounds to believe that the accused is not guilty and is unlikely to commit any offence while on bail. No material has been placed on record from which reasonable satisfaction can be drawn in favour of the petitioner.
38. The various grounds urged by the petitioner relating to alleged procedural lapses, discrepancies, or delay, do not dilute the rigors of Section 37. At best, such issues constitute matters for appreciation of evidence during trial and cannot, at this stage, form the reasonable grounds under section 37(1)(b)(ii) of the NDPS Act, for granting bail. The seriousness of the allegations, the nature of the recovery, and the

wider societal impact of offences involving commercial quantity further reinforce the need for strict adherence to the statutory mandate.

39. In view of the aforesaid discussion, no grounds are made out for grant of bail. Accordingly, the **bail application stands dismissed.**
40. The **trial court is directed to proceed with the matter expeditiously** and make every effort to conclude the trial at the earliest, without unnecessary delay.

(Wasim Sadiq Nargal)
Judge

Srinagar:
21.11.2025
Mubashir/JS

- i. **Whether the Judgment is Reportable:** Yes/No
- ii. **Whether the Judgment is Speaking:** Yes/No