S. No. 06
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Bail App No. 33/2026

Altaf Ahmad Shah **…Petitioner/Appellant(s)**

Through: Mr. Arzaan Ahmad, Advocate

Vs.

Union Territory of J&K through P/S Mehraj Gunj **...Respondent(s)**

Through: Ms. Shaila Shameem, Assisting Counsel vice
Mr. Mohsin Qadri, Sr. AAG

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

ORDER
06.10.2026

1. The petitioner, Altaf Ahmad Shah, is facing trial for the commission of an offence under Sections 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") in the challan titled *UT of Jammu & Kashmir through SHO, Police Station Mehraj Gunj v. Altaf Ahmad Shah*, arising out of FIR No. 48/2024 of Police Station Mehraj Gunj. Through the present application, the petitioner has called in question the order passed by the Trial Court rejecting his prayer for bail and seeks his enlargement on bail during the pendency of the trial.
2. The principal contention urged on behalf of the petitioner is that the prosecution has already examined the material witnesses and that PW-11, stated to be the only independent witness and whose statement had earlier been recorded under Section 164 Cr.P.C., has not supported the

prosecution case during trial. It is submitted that the said witness admitted having enmity with the petitioner and stated that he had falsely informed the Police that the petitioner was involved in the sale of narcotic substances. He further denied having ever purchased any narcotic substance from the petitioner or having witnessed the petitioner selling the same.

3. It is further contended that PW-12, the Executive Magistrate First Class, has stated in his deposition that it was daytime when the investigation commenced, whereas, according to the prosecution, the recovery was effected on 25.11.2024 at about 20:30 hours. Learned counsel submits that several prosecution witnesses have not supported the prosecution version, thereby materially weakening its case. Reliance is also placed upon the testimony of PW-16, the forensic expert, who, according to the petitioner, stated that six bottles forming part of the seized consignment did not bear batch numbers or external labels/covers and that only representative samples were subjected to forensic examination.

4. The petitioner further contends that the vehicle in which he was travelling is registered in his name but is occasionally used by his sister, who is an Advocate. It is stated that an Advocate sticker had, therefore, been affixed on the vehicle. According to the petitioner, his implication in the case is the result of an earlier altercation between his sister and the then SHO of the concerned Police Station and that the criminal case has been foisted upon him on account of such animosity.

5. The prosecution case, in brief, is that on 25.11.2024 at about 20:30 hours, Police Station Mehraj Gunj received a docket from ASI

Mushtaq Ahmad stating that vehicle bearing registration No. JK15A-8122, while coming from Dalal Mohalla towards Fateh Kadal, was signalled to stop. Upon search of the vehicle, 15 bottles suspected to contain Codeine Phosphate-based cough syrup/linctus were recovered. Six of these bottles were allegedly without printed labels/body prints, with certain particulars written by micro pen on their lower portion, and were stated to contain approximately 100 ml each. Certain tablets of Tapentadol were also recovered. As the petitioner allegedly failed to satisfactorily explain his possession of the substances, FIR No. 48/2024 came to be registered.

6. The prosecution further alleges that, after registration of the FIR and apprehension of the petitioner, the services of an Executive Magistrate First Class were requisitioned and the requisite seizure and sampling proceedings were undertaken. The petitioner's mobile phone was also seized and, upon examination of the call detail records, it allegedly emerged that he was in regular contact with Kaiser Maqbool, Irshad Ahmad and Sajad Ahmad, who, according to the prosecution, were involved in the consumption and transportation of narcotic substances.

7. It is further the prosecution case that during investigation Irshad Ahmad made a statement under Section 164 Cr.P.C. implicating the petitioner and alleging that he was involved in the unauthorised possession and sale of narcotic drugs. On the basis of the material collected during investigation, the petitioner came to be charged under Sections 8/21 of the NDPS Act. The prosecution also relies upon the forensic report, according to which Codeine Phosphate was detected in the samples sent for examination. On that basis, the prosecution

maintains that the quantity involved falls within the commercial category.

8. The prayer for bail is opposed by the prosecution on the ground that the petitioner failed to furnish any satisfactory explanation regarding possession of the seized substances and that the forensic examination confirmed the presence of Codeine Phosphate. It is further alleged that the petitioner was engaged in drug peddling and was misusing the Advocate sticker affixed on the vehicle, which belonged to/was used by his sister, so as to avoid scrutiny by law-enforcement agencies. It is, accordingly, submitted that the accusations are grave and that the Trial Court has rightly declined bail.

9. Heard the counsel for the parties and perused the record.

10. The Trial Court record reveals that the petitioner has remained in custody since his arrest. Charge for the offence under Sections 8/21 of the NDPS Act was framed against him on 21.05.2025, whereafter the matter proceeded to trial. As submitted by learned counsel for the parties, out of the prosecution witnesses cited in the case, a substantial number have already been examined as of September 2026, including witnesses associated with the seizure proceedings.

11. According to the prosecution, the seizure comprised 15 bottles containing/suspected to contain Codeine Phosphate, described as follows:

    (i) four bottles of “Kaim Odin-T Codeine Phosphate”, each containing 100 ml, bearing Batch No. AL-6223;

(ii) five bottles of "Cocrex Chlorpheniramine Maleate & Codeine Phosphate Syrup", each containing 100 ml, bearing Batch No. VHL2302014; and

(iii) six bottles, each stated to contain approximately 100 ml, without printed labels or batch numbers, with certain particulars written by micro pen on the lower portion of the bottles.

12. Apart from the aforesaid bottles, certain Tapentadol tablets were also recovered. However, the prosecution case, insofar as the present bail application is concerned, rests substantially upon the recovery of the aforesaid 15 bottles. The record further reveals that out of the nine bottles bearing printed labels and batch numbers, one bottle of Cocrex bearing Batch No. VHL2302014 was drawn as a sample and sent for forensic examination. Likewise, from the remaining six bottles which did not bear labels or batch numbers, one plastic bottle was drawn as a sample and forwarded for forensic analysis. The forensic report records detection of Codeine Phosphate in the exhibits forwarded for examination.

13. Learned counsel for the petitioner has laid considerable emphasis upon the manner in which the samples were drawn and the consequent evidentiary value of the forensic report in relation to the entire seized quantity. The submission is that the result pertaining to the representative sample drawn from a particular identifiable lot cannot, at this stage, automatically be extended to bottles which were neither individually tested nor shown, on the basis of labels, batch numbers or

other identifying particulars, to form part of the same homogeneous lot.

14. It is, therefore, argued that, even if the prosecution case is accepted at its face value for the limited purpose of considering the present bail application, only the nine bottles bearing printed labels and batch particulars can, prima facie, be treated as constituting an identifiable lot. Those nine bottles contain 100 ml each, aggregating to 900 ml. Learned counsel accordingly submits that the prosecution has, at this stage, failed to establish that the entire quantity of all 15 bottles can be treated as commercial quantity for attracting the stringent conditions contained in Section 37 of the NDPS Act.

15. The aforesaid contention assumes significance in the peculiar facts of the present case. The six remaining bottles did not bear printed labels or batch numbers. Only one bottle from amongst those six was subjected to forensic examination. In the absence, at this stage, of material establishing that all six unlabelled bottles formed part of one homogeneous lot containing an identical substance in identical concentration, the result of the sample drawn from one such bottle cannot, for the limited purpose of deciding the present bail application, necessarily be extrapolated to all the remaining untested bottles. This aspect of the matter has not been effectively controverted by the prosecution during the course of hearing. Thus, for the limited purpose of consideration of bail, the material presently available raises a substantial question as to whether the entire seized quantity can be treated as commercial quantity so as to attract the rigours of Section 37 of the NDPS Act.

16. There is no doubt that the allegations levelled against the petitioner are serious. The prosecution alleges that the vehicle used for carrying the substances was registered in the petitioner's name and that an Advocate sticker, associated with his sister who is an Advocate, was affixed thereon and was being used as a means to avoid scrutiny. The petitioner, on the other hand, attributes his implication to alleged animosity between his sister and the then SHO of the concerned Police Station. These rival versions necessarily fall within the domain of trial and no final opinion thereon is warranted at the stage of consideration of bail.

17. The Court is equally conscious that, while considering an application for bail, it is neither permissible nor desirable to undertake a meticulous appreciation of evidence or to record findings which may prejudice either party during trial. The material on record is, therefore, required to be examined only to the limited extent necessary for determining whether the statutory restrictions governing the grant of bail are attracted and whether the petitioner has otherwise made out a case for enlargement on bail.

18. The testimony of PW-11, who had earlier made a statement under Section 164 Cr.P.C., and the evidence already led by the prosecution are matters which will ultimately have to be evaluated by the Trial Court in their proper perspective. At this stage, however, the fact that material prosecution evidence has already been recorded considerably reduces the apprehension of the petitioner influencing or interfering with such evidence. The petitioner has also remained in custody since the inception of the case and the trial is yet to conclude.

19. Having regard to the nature of the sampling undertaken, the fact that six of the seized bottles did not bear labels or batch numbers, and the limited forensic examination of representative samples, this Court is of the prima facie view, solely for the purpose of the present bail application, that the prosecution has not been able to demonstrate with sufficient certainty that the entire seized quantity is liable to be treated as commercial quantity. Consequently, the rigours of Section 37 of the NDPS Act cannot, at this stage, be invoked to deny consideration of the petitioner's prayer for bail.

20. Once the statutory embargo under Section 37 of the NDPS Act is not shown, prima facie, to be attracted, the prayer for bail is required to be considered on the ordinary principles governing grant of bail. Regard being had to the period of custody already undergone by the petitioner, the stage of the trial, the examination of material witnesses, and the circumstances noticed hereinabove, this Court is satisfied that the petitioner has made out a case for grant of bail.

21. Accordingly, without expressing any opinion on the merits of the prosecution case, including the legality or otherwise of the recovery and seizure or compliance with the statutory safeguards prescribed under the NDPS Act, the application is allowed. The petitioner, Altaf Ahmad Shah, shall be released on bail, subject to the following conditions:

    (i) The petitioner shall furnish a personal bond in the sum of ₹1,00,000/- (Rupees One Lakh only), with two sureties of the like amount, to the satisfaction of the Trial Court;

(ii) The petitioner shall appear before the Trial Court on each and every date of hearing unless his personal appearance is specifically exempted by the Trial Court, and shall not leave the territorial jurisdiction of the Union Territory of Jammu & Kashmir without prior permission of the Trial Court; and

(iii) The petitioner shall not indulge in any offence similar to the offence for which he is presently facing trial.

22. It is made clear that the observations made hereinabove are confined exclusively to the consideration of the present bail application and shall not be construed as an expression of opinion on the merits of the case. The Trial Court shall proceed with the trial uninfluenced by any observation made in this order.

23. Bail App. No. 33/2026 is, accordingly, **disposed of**. A copy of this order be transmitted to the learned Trial Court for information and compliance.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:
06.10.2026
Akhil Dev

Whether the order is speaking? Yes
Whether the order is reportable? Yes