Sr. No. 02

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No. Bail App No. 98/2026
Date of pronouncement:- 05.10.2026
Date of uploading:- 07.10.2026

Mohd. Salim Khan S/o Hayat Khan .....Petitioner(s)
R/o 168, Harpat Nar Seer Aish
Muqam District Anantnag

Through: Mr. Idrees Saleem Dar, Advocate

Vs

Union of India through Intelligence Officer Narcotics Control Bureau, Jammu.

..... Respondent(s)

Through: Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER
05.10.2026

1. The petitioner has invoked the jurisdiction of this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS], seeking enlargement on bail in NCB Crime No. 07/2023 dated 06 December 2023, registered by Narcotics Control Bureau, Jammu, for offences under Sections 8/20/29 NDPS Act, 67(c) IT Act, and 201/204 IPC.

2. The petitioner had earlier moved a similar application before the Court of learned Additional Sessions Judge, Kathua (the trial Court), which was rejected by order dated 05 June 2024.

3. It is contended that the petitioner was sought to be arraigned on the basis of the statement of co-accused, and that such statement is hit by Article 20 (3) of the Constitution of India.

It is further contended that a statement of a co-accused recorded under Section 67 of the NDPS Act is inadmissible. Reliance is placed on the judgment of Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu; (2021) 4 SCC 1***.

4. The further ground urged is prolong incarceration without progress of the trial, said to be in violation of Article 21 of the Constitution of India. It is also urged that the grounds of arrest were not supplied to the petitioner. Learned counsel for the petitioner vehemently argued that neither was any recovery effected from the petitioner, nor is there any admissible material showing his prima-facie complicity, and that he has been made to suffer only on the statements of the co-accused.

5. Learned counsel for the petitioner further questioned the legality of CCTV Footage, which is said to have formed the basis for the arrest. It is prayed that liberty cannot be curtailed on the basis of inadmissible material.

6. In rebuttal, the respondents have objected that the petitioner has suppressed material facts. It is submitted that there is overwhelming material establishing his complicity, including hotel records, CCTV Footage, statements of independent witnesses, call detail records, customer application forms, and other corroborative material showing his active role in the conspiracy. The respondents have placed the foundational facts and the material collected during investigation, and have

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also set out the chain of custody of the seized contraband. The material is noticed hereinafter.

7. Learned counsel for the respondents canvassed that the petitioner is part of an organized network engaged in trafficking of narcotics, with presence from Union Territory of J&K to the State of Gujarat, and that it may not be possible to secure his presence, if he is admitted to bail. It was further argued that, having regard to the severity of the punishment and the nature of the offence, it is not in the interest of society to admit the petitioner to bail at this stage, and that there is every likelihood of the witnesses and the evidence being tampered with.

8. Heard learned counsel for the parties and perused the record.

9. Prosecution case, in brief, is that on 06.12.2023, on prior information that a parcel was being transported from Jammu to Gujarat in a passenger bus, the Narcotic Control Bureau team mounted surveillance. During the operation, passenger bus bearing registration No. NL-07-B-3111 was intercepted. On search, accused-Suthar Minesh Kumar Ghanshaymbhai was found in possession of three packets of Charas, weighing 2.910 kgs. Accordingly, the codal formalities were completed. During investigation, it was found that the petitioner, Mohd. Salim Khan, was the source and supplier of the recovered charas. In the follow-up investigation, the petitioner was identified by the co-accused and by independent witnesses as

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a person associated with the procurement and supply of the contraband. The material collected during investigation is stated to show that the petitioner was continuously associated with co-accused-Suthar Minesh Kumar Ghanshaymbhai and Saiyad Sarfaraj Ali in furtherance of the illicit trafficking.

10. From the statement of Sh. Pankaj Verma, owner of Hotel Verma, it is gathered that the petitioner had stayed in the said hotel during the relevant period, and were identified through hotel record and CCTV Footage. The CCTV Footage was preserved along with the certificate under Section 65-B of the Indian Evidence Act, said to corroborate the presence of the petitioner at the relevant place and time.

11. The prosecution case is that the alleged contraband was delivered by the petitioner to the co-accused at Jammu, while the petitioner was staying in the hotel. This is sought to be corroborated by the statement of Mst. Mubeena Bano, wife of the petitioner, who disclosed that mobile No. 6006163439 though registered in her name, was used by the petitioner. The Call Detail Records are relied upon to show that the petitioner was in constant touch with the co-accused.

12. On completion of investigation, the complicity of the petitioner and the co-accused is said to stand established on the basis of the recovery of commercial quantity of Charas from the co-accused, the statements of witnesses, the CCTV Footage, the hotel records, the customer application forms, the call detail

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records, the Telecom Analysis, the documentary evidence, and the statements recorded during investigation.

13. The investigation concluded that the petitioner was the source and supplier of the recovered charas, and had handed the contraband to co-accused Suthar Minesh Kumar Ghanshaymbhai for onward deliver to co-accused Saiyad Sarfaraj Ali, who was residing in Gujarat. On that material, it was concluded that the petitioner and the co-accused were involved in the procurement, supply, transportation and delivery of a commercial quantity of charas. Accordingly, the complaint was laid before the trial Court, and formal charges were drawn up against the accused under Sections 8/20/29 NDPS Act & 67(c) IT Act, 201 & 204 IPC on 24 January 2026. The trial Court rejected the bail application on the ground that the petitioner is involved in trafficking of a commercial quantity of contraband, and that the rigours of Section 37 of the NDPS Act are attracted. The trial Court has recorded its satisfaction on the basis of the material collected during investigation.

14. From the factual analysis noticed above, it is conspicuous that the petitioner was arrested and arraigned on the basis of the CDRs, CCTV Footage of the hotel, where, according to the prosecution, the alleged narcotics changed hands, the supply having been made by the petitioner. These are the prima-facie materials which, if accepted at face value, tend to show the complicity of the petitioner in the alleged offences. It is

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on that view that the trial Court formed its opinion while framing the formal charges.

15. Insofar as the ground that the grounds of arrest were not supplied, the same runs contrary to the admission in Paragraph 1.26 of the memo of the petition. The petitioner has specifically admitted that he was arrested on 26 April 2024; that an arrest memo was prepared; and that the grounds of arrest were explained to him. He has also averred that information regarding the arrest of co-accused Saiyad Sarfaraj Ali was intimated to the family of that co-accused telephonically. Therefore, the petitioner cannot blow hot and cold in the same breath. He is, prima-facie, found involved in a heinous offence having far-reaching consequences not only for society but also for the economy of the country. He is not entitled to the concession of bail at this stage.

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16. There can be no quarrel with the proposition that a confessional statement of a co-accused is inadmissible against the petitioner, and that the Petitioner cannot be made to suffer solely on the basis of such a statement. If that were the only material against the Petitioner, continued incarceration would indeed offend Article 21 of the Constitution. On scrutiny of the record, however, the disclosure statement of the co-accused furnished the initial information regarding a wider network engaged in drug peddling, of which the Petitioner was alleged to be one of the suppliers. The Prosecution has sought to

corroborate that allegation by independent material in the shape of CCTV Footage, hotel records and the conversations said to have been exchanged between the co-accused and the Petitioner. Call Detail Records (CDRs) have also been collected. These materials are yet to be formally proved at the trial. At this interlocutory stage, it would be neither proper nor desirable to pronounce upon their ultimate admissibility or evidentiary value, as any such observation is likely to prejudice either side.

17. In "Narcotics Control Bureau V. Kashif, 2025 (2) Supreme Court 268", the Hon'ble Supreme Court, while dealing with the mandate of Section 37 of the NDPS Act, observed that, where the offence is punishable with minimum sentence of 10 years, the accused shall generally be not released on bail and that "negation of bail is the rule and its grant an exception". It was further held that the provisions of Section 37 are mandatory, and that the recording of the twin findings contemplated therein is a sine qua non for grant of bail. A similar view has been expressed by the Hon'ble Supreme Court in "State of Meghalaya V. Lalrintluanga Sailo and Anr., 2024 (6) Supreme 568**".**

18. In "***Union of India V. Vigin K. Varghese, 2025 SCC Online (SC) 2440***", the Hon'ble Supreme Court observed that 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 subjective control and antecedent involvement, risks trenching upon appreciation of evidence, which would be in the domain of trial court at first instance.

From the above dictum, it is pellucid that Section 37 of the NDPS Act is mandatory. When the statutory conditions contained therein are pitted against the plea of prolonged incarceration and likely delay in the trial, the former must take precedence.

19. It is important to note that in "Narcotics Bureau V. Mohit Agarwal, (2022) 18 SCC 374", a three-Judge Bench of the Hon'ble Supreme Court held that the length of the period of custody, or the fact that the charge sheet has been filed, or even that the trial has not commenced, by themselves, are not considerations that can be treated as persuasive grounds for grant of bail under Section 37 of the NDPS Act.

20. Apart from the rigors of Section 37 of the NDPS Act, the statement of the co-accused merely furnished the initial information that enabled the Investigating Officer to probe the larger conspiracy of regular supply of the drug. The investigation, thereafter, collected independent material in the form of CCTV Footage, hotel records, CAFs, CDRs, and other material, prima

facie showing the complicity of the Petitioner in dealing with the manufactured narcotic drug. The principle laid in Mohit Agarwal (supra), therefore, assumes significance. It is observed:

> ***"18. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by the learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage."***

21. It is trite that at the bail stage, Court is precluded from undertaking a detailed examination of the evidence or from rendering findings that touch upon the merits of the case. Only a prima facie assessment of the material is warranted. The Court cannot conduct a mini trial or record conclusion that could influence the outcome of the trial. In support of this proposition reference can be made to the judgment of Hon'ble Supreme Court passed in State of Karnataka Versus Sri Darshan Etc 2025 INSC 979.

22. Therefore, in view of the mandatory provision of Section 37 of NDPS Act and material available on record, no ground is made out for enlargement of the petitioner on bail at this stage.

23. For the foregoing reasons, the Bail petition is dismissed. It is, however, made clear that the observations made or findings recorded hereinabove shall not be construed as an expression of opinion with regard to the merits of the trial and that the same shall only be confined to the disposal of this Petition.

24. The learned trial Court shall make an endeavor to record the star witnesses at first instance, after fixing a calendar for the trial expeditiously.

(SHAHZAD AZEEM)
JUDGE

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Tarun/PS

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No

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Tarun Kumar Gupta
2026.10.07 17.46
I attest to the accuracy and
integrity of this document