HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No. CrlA(D) No. 59/2025
Reserved on: 09.10.2026
Pronounced on: 13.10.2026
Uploaded on:- 13.10.2026
Whether the operative part or full judgment is pronounced:- ***Full***

Gurpartap Singh.

.....Petitioner/Appellant(s)

Through: Mr. Iqbal Hussain Bhat, Advocate.

Vs

National Investigation Agency

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC
Mr. Ahwani Verma, PP, NIA
Mr. Hargopal Singh, DSP

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

(JUDGMENT)

Per:- Shahzad Azeem-J

1. This appeal under Section 21 of the National Investigation Agency Act, 2008 [NIA Act] is directed against the order dated 16 October 2025 passed by the learned Special Judge, NIA, Jammu [the trial Court] in File No. 457/2024/Bail, whereby the application for grant of bail moved by the appellant-accused Gurpartap Singh (A-1) in R.C: 05/2020/ NIA/Jammu, came to be dismissed.

PROSECUTION CASE

2. The brief facts, relevant for disposal of the present appeal, are that on 20 September 2020, a local police party of Police Station, Arnia was on patrolling duty near Bulley Chak when unprovoked firing started from the Pakistan side of the International Border [IB]. During the subsequent search operations conducted by BSF between BOP Bulley Chak and BOP Budhwar, a larger quantity of heroin weighing 61.420 kg, Opium weighing 1.245 kg, two Pistols, three Magazines and 100 Live Cartridges were recovered. FIR No. 65/2020 was registered at police station, Arnia under Section 307/120-B/ 121 IPC and Section 7/25 of the Arms Act. During investigation, 07 accused, including the appellant (A-1) were arrested and further recovery of Heroin, Arms and Cash were effected.

3. In view of the gravity of offence, large recovery of commercial quantity of narcotics and alleged involvement of Babbar Khalsa International (BKI), the Central Government directed National Investigation Agency to take over the investigation. Accordingly, the case was re-registered as RC: 05/2020/NIA/JMU. After investigation, the charge-sheet dated 17 April 2021 was filed under Section 8, 21, 23, 27-A and 29 of

the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act] read with Section 120-B IPC and Section 17, 18, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967 [UA(P) Act]. Charges to the same effect came to be framed against all the accused, including the appellant by order dated 23 August 2022.

4. The prosecution case, in brief, is that the appellant was the central figure in a module allegedly engaged in smuggling of commercial quantities of heroin and arms from Pakistan across the International Border near Arnia sector, with the objective of raising funds for the banned terrorist organisation, BKI. The appellant is alleged to have provided ₹ 20 lakh for the successful execution of the first consignment involving 10 kg of heroin, procured distinctive bags for carrying the money, and directed reconnaissance of vulnerable points along the border. He is also linked to the larger consignment that was seized on 20 September 2020. In support of its case, the prosecution inter alia, relied upon protected witnesses, recoveries, call records, and other material.

GROUNDS AND SUBMISSIONS

5. The principle contentions advanced on behalf of the appellant are; that of prolonged incarceration of more than 05

years and violation of the right to speedy trial under Article 21 of the Constitution; that of the parity with co-accused, who have been granted bail; the absence of any recovery from the appellant and alleged inadmissibility of disclosure statements; and that the witnesses examined so far have not incriminated the appellant.

6. The National Investigation Agency has opposed the bail by filing a detailed reply affidavit. It is submitted that the twin statutory conditions under Section 43-D (5) of the UA(P) Act and Section 37 of the NDPS Act are attracted; that the charges have already been framed and have attained finality; that sufficient prima-facie material exists against the appellant in the form of statements of protected witnesses, recovery of a letter pad of Babbar Khalsa International from his house, the distinctive bags purchased by him and other documentary and material evidence; and that mere delay in trial is not a ground to grant bail to the appellant particularly having regard to the nature and gravity of the offences alleged. Accordingly, learned counsel for the respondents prayed for dismissal of the appeal.

ANALYSIS

7. Indisputably, the formal charges against the appellant have been framed on 23 August 2022 under Sections 120-B IPC

read with Sections 8, 21, 23, 27-A and 29 of the NDPS Act, having found involved in commercial quantity of narcotics and Section 17, 18, 38, 39 & 40 of the UA(P) Act. Sections 17 & 18 fall in Chapte IV and Sections 38, 39 & 40 fall in Chapter VI of the UA(P) Act. Consequently, the restrictions contained in Sub-Section (5) of Section 43-D of the UA(P) Act are attracted.

8. Simultaneously, the prosecution case involves commercial quantity of Heroin. Therefore, rigors of Section 37 of the NDPS Act are also attracted. The twin conditions under Section 37 of the NDPS Act and Section 43-D(5) of the UA(P) Act are almost *pari materia.* Before bail can be granted, the Court must be satisfied that there are reasonable grounds for believing that the prosecution is not prima-facie true and that the accused is not guilty of the offence, and is not likely to commit any offence while on bail.

9. It is well settled that at the stage of consideration of bail, the Court is only required to record a finding on the basis of broad probabilities regarding the involvement of the accused. The Court is not required to conduct a detailed evaluation of evidence or return a finding based on proof beyond reasonable doubt. The material collected by the Investigating Agency must prevail

until contradicted or disproved by other evidence. Once charges have been framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court.

10. On a perusal of the material on record, including the statements of PW-31, PW-32, PW-37, PW-38 (protected witness), PW-40(protected witness) and PW-41, as also the recovery of a letter pad of Babbar Khalsa International from the house of the appellant and the distinctive bag purchased by him for carrying money, we are of the view that there is prima-facie material indicating the involvement of the appellant in the larger conspiracy of smuggling commercial quantities of Heroin and Arms for the purpose of raising funds for BKI. Several material witnesses including protected witnesses and experts, are yet to be examined. The stage has not been reached to record the satisfaction required under the twin statutory provisions.

11. We are not oblivious; rather, we are fully alive to the allegations regarding recovery of certain gadgets from the house of the appellant. In this regard, reports of the experts relating to CERT-In and SIM Card scrutiny are yet to be examined.

12. Insofar as the plea of delay in trial and prolonged incarceration is concerned, the law is no more *res integra.* Once

an accused is prima-facie shown to be involved in such heinous offences involving terrorism financing and narcotic-terrorism, the plea of delay in trial or right to speedy trial would not come to his rescue, because enlargement of bail in such circumstances would be fraught with danger of indulgence in similar activities, particularly, when non-state actors in control of all such alleged terrorist related activities and are operating from across the Border.

13. In **Gurwinder Singh Vs. State of Punjab and Ors. ; AIR 2024 SC 952,** the Hon'ble Supreme Court has observed that the conventional idea that "bail is the rule and jail is the exception" does not find any place while dealing with bail applications under the UA(P) Act. The form of the words used in the proviso to Section 43-D(5) to the effect that, "shall not be released" suggests the intention of the legislature to make bail the exception and jail the rule.

14. The Apex Court further distinguished the judgment in **Union of India Vs. K.A Najeeb; (2021) 3 SCC 713.** It was held that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail, especially when the trial is underway and material witnesses remain to be examined. It is

also held that where material available on record indicates the involvement of the appellant in furtherance of a terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore, in such a scenario, if the appellant is released on bail, there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail.

15. In **National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1**, the Hon'ble Supreme Court held that, while considering a bail application under Section 43-D(5) of the UA(P) Act, the Court is not required to undertake a detailed examination of the evidence. Rather, the Court must form a prima facie opinion on the basis of the broad probabilities emerging from the material placed on record and determine whether the accusation against the accused is prima facie true. The material must be viewed as a whole and, admissibility is not to be decided at this stage.

16. In **Narcotics Control Bureau Vs. Kashif; (2024) 11 SCC 372,** the Hon'ble Supreme Court held that negation of bail is the rule and its grant is an exception under Section 37 of the NDPS Act, where the offence is punishable with minimum sentence of 10 years. It was further held that recording of the twin conditions is mandatory. In **State of Punjab Vs. Sukhwinder Singh alias Gora; (2026) 7 SCC 513,** bail granted by the High Court in a commercial quantity was set aside and the Apex Court held that the twin conditions under Section 37 (1) (b) (ii) of the NDPS Act are mandatory. The Apex Court went onto hold that Article 21 cannot override or dilute Section 37 and both must be read harmoniously. The Apex Court further took serious note of the previous involvement of the appellant in the similar case. Similarly, in this case also, as discernible from the charge-sheet, appellant is shown to have involved in as many as 11 FIRs.

17. The appellant has pressed the ground of parity by contending that certain co-accused have been granted bail. It is well settled principle of law that parity in the matter of bail is not an absolute or a mechanical rule. The benefit of parity can be extended to an accused only upon a careful comparison of the nature and gravity of the allegations, the specific role attributed

to each accused, and the degree of their respective involvement and participation in the alleged offences. The role attributed to the appellant must, therefore, be identical or substantially similar to that of the co-accused who have been granted bail, and the mere fact that some co-accused have been enlarged on bail does not, by itself, entitle the appellant to the same relief. The Court is required to examine the individual role, nature of offence against each accused and the stage of trial before extending the benefit of parity.

18. In cases involving offences under the UA(P) Act and the NDPS Act, for commercial quantity, the principle of parity is to be applied with greater circumspection. It is trite that mere grant of bail to one co-accused does not automatically entitled another co-accused to bail, particularly, when the material on record shows a distinct and more prominent role. After framing of charges, each bail application has to be decided on its own merits with reference to the evidence pertaining to the individual accused.

19. In the present case, the role attributed to the appellant-Gurpartap Singh is distinct and of a higher degree of involvement as compared to the co-accused who have been granted bail. As per the prosecution case and the material on record, the

appellant is projected as a central figure of the module who was to receive the consignments of Heroin and Arms smuggled from across the Border and who was responsible for raising funds for BKI; he is alleged to have provided Rs. 20 laks for the successful first consignment of 10 kg Heroin and to have procured a distinctive bag for carrying the money; he is alleged to have directed reconnaissance of vulnerable points on the International Border near Arnia for the purpose of facilitating smuggling; and a letter paid of BKI was recovered from his house which has been relied upon by the prosecution as indicative of his association with the banned organization. The statement of protected witnesses and other material witnesses including that of experts specifically attribute to him the role of organizer and financier of the narco-terrorism module cannot be ignored and thus, it will be too early in the day to form an opinion in absence of the evidence of those material witnesses.

20. In contrast, the co-accused who have been granted bail are attributed roles of a comparatively limited nature, such as carriers, local facilitators or persons involved in lesser stages of the conspiracy. Their bail orders were passed on the basis of evidence then available against them. The role of the appellant

being that of a principal conspirator and fund raiser for BKI is not comparable, therefore, the appellant cannot claim parity as a matter of right.

21. This Court in Arshad Ahmed Allaie Vs. UT of J&K, CrlA(D) No. 8/2025 decided on 11 July 2025, has also declined the plea of parity where role of the applicant was found to be distinguished and where the trial Court while granting bail to the co-accused had not adequately considered the mandatory requirement of Section 37 of the NDPS Act.

22. In view of the law governing the subject, the material collected during investigation, the framing of charges and the evidence that has already come on record against the appellant, we are satisfied that there is prima-facie material indicating the complicity of the appellant in the alleged offences of smuggling commercial quantities of narcotics and raising funds for a banned terrorist organization. At this stage, no case is made out for interference with the well reasoned order of the trial Court.

23. For the foregoing reasons, the bail plea of the appellant is rejected and consequently, the appeal is dismissed.

24. The observations made in this order are limited to the adjudication of the present appeal and shall not prejudice the merits of the case during the trial.

25. However, we expect that the trial Court shall expedite the trial and proceed to record the witnesses by fixing appropriate calendar(s).

26. Disposed of.

(SHAHZAD AZEEM)
JUDGE

(SANJAY DHAR)
JUDGE

JAMMU
13.10.2026
Tarun/PS

Whether judgment is speaking: ***Yes***
Whether judgment is reportable: ***Yes***

Tarun Kumar Gupta
2026.10.13 17:01
I attest to the accuracy and
integrity of this document