

Sr. No.

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No. 144/2025

Reserved on: 31.07.2025
Pronounced on: 03.12.2025
Uploaded on: 03.12.2025

Whether the operative part or full
judgment is pronounced: Full

**Arfaz Mehboob Tak, age 37 years
S/o Mehboob Ahmed Tak, R/o Munshi
Mohalla, Near Nehru Chowk, District Doda
Through his father
Mehboob Ahmed Tak**

.....Petitioner(s)

Through: Mr. Prince Khanna, Advocate

Vs

- 1. Union of India Through Sub-Inspector
Narcotics Control Bureau, Jammu Zonal
Unit, Jammu.**
- 2. Superintendent District Jail, Amphalla,
Jammu.**

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

- Through the medium of the instant successive petition filed in terms of the provisions of Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), bail in favour of the petitioner/accused namely Afraz Mehboob Tak S/o Mehboob Ahmed Tak, R/o Munshi Mohalla, Near Nehru Chowk, District Doda in Crime No. 24/2024 of Narcotics Control Bureau, Jammu Zonal Unit, Jammu, registered under Sections 8/21, 22, 27A, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act')

for short) has been sought on the grounds inter alia that he is a citizen of India and a permanent resident of UT of J&K, as such, entitled to seek protection of his constitutional as well as other legal rights. That he is innocent and has been falsely and frivolously implicated in the case. That he is a young qualified businessman running a hotel and a restaurant by the name of Tak Residency Hotel & Restaurant at Doda. That he is a sole bread earner of his family having old and ailing parents as also his wife and a child. That he and the co-accused are known to each other being from the same area. That he was called to its office by the respondent-Narcotics Control Bureau, Jammu Zonal Unit, Jammu, several times and was formally arrested on 10.03.2025 in connection with the case. That despite fully cooperating with the Investigating Officer of the crime number in question, he was unfortunately booked in the case on account of his alleged involvement in the case by way of financing the said illicit trafficking under a conspiracy. That upon his arrest in the crime in question on 10.03.2025, he immediately approached the Court of learned Special Judge (NDPS Cases), Jammu (hereinafter referred to as 'the trial Court' for short) seeking bail by agitating his non-involvement in the case. That the learned trial Court through a common order dated 09.04.2025 passed on the said application as also on the remand application of the respondent rejected the said bail application on the main ground that the petitioner/accused is involved in financing of the illicit trafficking in the Narcotics Substances under conspiracy. That the main basis for his involvement in the case is the alleged statement of the co-accused Saqib Zaffar made under Section 67 of the NDPS Act as also of his own such statement without there being any

recovery from him pursuant to the aforesaid alleged statements. That he has been involved in the case on the basis of a small bank transaction from his account to the account of the co-accused Saqib Zaffar without any supporting evidence, to the effect that the same was done in connection with the alleged crime. That the disclosure statement of the accused or a co-accused is not admissible in evidence unless the same leads to some recovery or identification of a new fact. That since the co-accused was already known to petitioner being from his area, as such, he had admittedly made the transfer of some minor amount to the co-accused in connection with procurement of some article for his hotel. That nothing has been either recovered from his conscious possession or even at his instance subsequent to the alleged disclosures made under Section 67 of the NDPS Act by him as well as by co-accused. That no conspiracy can be attributed to have been hatched by him in the facts and circumstances of the case. That the provisions of Section 37 of the NDPS Act cannot be attracted in the facts and circumstances of the case as there appear no reasonable grounds of his involvement in the crime in question. That he has been suffering incarceration in the case since the date of his arrest on 10.03.2025 which amounts to his pre-trial conviction. That his liberty stands curtailed on account of his continued detention in the case.

2. The respondent-NCB has resisted the bail application through the memo of objections filed by the learned Deputy Solicitor General of India to the effect that the petitioner/accused is involved in heinous, non-bailable and anti-social offences carrying stringent punishment. That the liberty of the petitioner stands curtailed strictly in accordance with law on account of his

involvement in a very heinous case under NDPS Act. That having regard to the seriousness of the crime committed by the petitioner read with disabling provisions of Section 37 NDPS Act, no ground is made out for grant of bail in favour of the petitioner. That the learned trial Court has already rejected earlier bail application of the petitioner through order dated 09.04.2025. That a commercial quantity of contraband Substances consisting 7.221 Kgs of Codeine Based Cough Syrup and 0.550 Kgs of Spasmo Proxyvon Plus Capsules containing Tramadol (900 in Nos.) came to be recovered in the case. That as per the voluntary statement of co-accused Saqib Zaffar dated 24.11.2024, the petitioner has sent money amounting to Rs.15,000/- through Online mode of payments to the former for the illicit trafficking of Narcotic Drugs and Psychotropic Substances. That as per the own voluntary statement of the petitioner Afraz Mehboob Tak recorded on 10.03.2025 under Section 67 NDPS Act, he had sent money to co-accused Saqib Zaffar amounting to Rs.5,000/- through M-pay of the J&K Bank on 22.11.2024 when co-accused was present in Delhi for purchasing of contraband substances. That the petitioner further disclosed in his statement that he also sent money amounting to Rs.4000/- to the co-accused Saqib Zaffar on 08.11.2024 for purchasing of contraband Narcotic Drugs and Psychotropic Substances. That the petitioner further disclosed in his own statement that he contacted the supplier Samar Zia through IMO application for illicit trafficking of contraband substances i.e Codeine Based Cough Syrup and Tramadol Capsules. That the petitioner/accused was intended receiver of the seized contraband. That the case of the petitioner firstly does not qualify for being considered as regards the grant

of bail in his favour on the main ground of seriousness of the crime committed and secondly the provisions of Section 37 of the NDPS Act place an embargo in the matter on account of the involvement of commercial quantity of contraband substances and the commission of offence under Section 27A of the NDPS Act. That the menace of drug addiction is on an alarming increase and any lenient view in the case of the petitioner is likely to cause miscarriage of justice by encouraging the drug paddlers. That having regard to the stringent punishment carried by the offences committed by the petitioner, there is every apprehension of his misusing the concession, if granted in his favour by absconding at the trial.

3. The facts of the complainant's case relevant for disposal of this application are that on 23.11.2024 at 2200 Hours specific information was received by Sh. Bijay Anand Pradhan, Inspector NCB Unit, Jammu from reliable source that a person namely Saqib Zalfar S /o Zaffarullah Khan R/o Satellite Colony, Vidhata Nagar, Jammu, Bhatindi, Jammu is carrying huge quantity of Narcotics Drugs and is coming in Bus No. UK-07-PA/8833 from Delhi to Katra via Jammu and will pass through NH-44, Kunjwani Chowk, Jammu, between 0630 Hours to 0700 Hours on 24.11.2024. That pursuant to the receipt of said information, the competent officer constituted a team headed by Sh. Bijay Anand Pradhan Inspector [seizing officer in case of recovery]. That the detailed team moved from the office of NCB, Jammu at about 0500 Hrs on 24.11.2024 with necessary documents, DD Kit, weight machine, markin cloth, transparent polythene, official seal and reached Kunjwani Chowk NH-44 at about 0530 hours. That on 24.11.2024 at about 0630 Hrs the Bus

number in question was intercepted at Kunjwani NH-44, Jammu and the co-accused Saqib Zaffar, who was travelling in the said bus came to be apprehended, who was found in possession of Codeine Based Cough Syrup and Tramadol Capsules. That the recovered contraband Narcotic Drugs and Psychotropic Substances came to be seized as per the procedure. That the total Codeine Based Cough Syrup was 7.211 Kgs and total Tramadol Capsules were 900 in number weighing 0.550 Kgs. That the driver and conductor of the bus were requested for being witnessing the scene as independent witnesses who agreed for the same. That the seized property lot-wise was deposited in the NCB Godown vide Entry No. 108. That the apprehended accused was produced before the Magistrate in accordance with the law and necessary remand order was obtained. That the statement of the apprehended accused Saqib Zaffar was recorded after serving him a requisite notice, who voluntarily disclosed the name of one Sameer Ahmed of Delhi as the supplier of the contraband and the present petitioner Afraz Mehboob Tak as the intended receiver of the same. That the said co-accused saqib Zaffar also disclosed that the present petitioner made some money transactions in his account through M-pay/Online in connection with contraband substances. That the present petitioner was also given notice in terms of Section 67 NDPS Act and his statement was also recorded, during which he inter alia admitted that he asked Saqib Zaffar co-accused to bring tramadol capsules and codeine syrup for him. That he also disclosed that he used to make payments of drugs to co-accused Saqib Zaffar through Online transaction and large amount payment in cash. That the petitioner was arrested in the case on 10.03.2025. That the sampling of

the seized contraband substances was got done in the presence of the Judicial Magistrate and the sample was sent for expert analysis with the receipt of report in positive. That the supplier of the contraband Samar Zia S/o Ziauddin is not arrested till date and a letter has been sent to NCB, Delhi Zonal Unit for follow up action against him. That during the investigation in the case, the involvement of the petitioner and the co-accused Saqib Zaffar in the commission of offences punishable under Sections 21, 22, 27A r/w 29 of NDPS Act came to be prima facie made out.

4. The respondent-complainant has presented the final complaint before the learned trial Court on 22.05.2025 against the present petitioner and the co-accused Saqib Zaffar when liberty has been reserved for presentation of the supplementary charge-sheet against other co-accused Samar Zia. The final complaint of the respondent pertaining to Crime No. 22/2024 is pending disposal before the trial Court.
5. I have heard learned counsel for the petitioner/accused and the learned DSGI for the respondent.
6. The learned counsel for the petitioner while reiterating his grounds already taken in the bail petition submitted that the petitioner has been falsely and frivolously implicated in the Crime in question when he is innocent and has not committed the alleged offences. That he was not accompanying the co-accused Saqib Zaffar when the later was allegedly apprehended with the recovery of alleged contraband from him. That he has been involved in the case merely on the statement of the co-accused which in the facts and circumstances of the case is totally inadmissible as no recovery was made from him or at his instance pursuant to the said disclosure of the co-

accused. That the present petitioner is also alleged to have himself made a disclosure regarding his involvement in the case which is also a bald allegation for not having led to any sort of recovery or even the identification of the new fact.

The learned counsel submitted that the present petitioner stands falsely implicated in the case on the alleged ground that there has taken place a bank transaction of Rs.5000/- and Rs. 4,000/- respectively on 22.11.2024 and 08.11.2024 from his account to the account of co-accused Saqib Zaffar. The learned counsel submitted that the petitioner has made it clear in his bail application that the co-accused Saqib Zaffar was known to him being from his area as he at sometime sent some money to him in connection with the procurement of some article for his hotel. He submitted that even if it is supposed for arguments sake that the aforesaid two small amounts of Rs. 5,000/- and Rs.4,000/- were made by the present petitioner to the co-accused Saqib Zaffar in connection with purchase of contraband, yet such solitary and ordinary transactions cannot amount to financing of illicit trade. He further submitted that the alleged disclosure statements of the present petitioner as well as of co-accused Saqib Zaffar are inadmissible both under the provisions of Section 23 of Bharatiya Sakshya Adhiniyam, 2023.

The learned counsel for the petitioner further contended that admittedly the offences punishable under NDPS Act are highly anti-social having fatal consequences on the society, as such, the said offences whenever established need to be dealt with iron hands. However, the

innocent person cannot be involved in the commission of said serious offences without there being any supporting evidence.

The learned counsel submitted that in the facts and circumstances of the prosecution case there appear no reasonable grounds of involvement of the present petitioner from whose conscious possession or at whose instance nothing stands recovered. He submitted that the respondent-Bureau cannot be allowed to justify the continued incarceration of the present petitioner on the mere pretext that transfer of some small amounts of Rs. 5,000/- and Rs.4,000/- has taken place at two occasions. He further submitted that the petitioner has a good record at his credit and he has no bad antecedents.

The learned counsel further submitted that the accused person is presumed to be innocent till proved guilty and the burden of proving everything essential to the establishment of guilt lies on the prosecution/complainant. He submitted that the continued detention of the petitioner in the facts and circumstances of the case amounts to his pre-trial conviction. He submitted that the petitioner is deeply rooted in the society and there is no question of his misusing the concession of bail by tampering with the complainant's witnesses or by absconding at the trial. That he is ready to furnish surety and personal bonds for assuring his punctuality at the trial.

The learned counsel for the petitioner also contended that the respondent-Bureau while investigating the case has observed mandatory provisions of Section 50 of the NDPS Act in breach. That despite prior information having received on the previous evening, no exercise was

made to take a Magistrate or Gazetted Officer with the raiding party for recovery and seizure of the alleged contraband. That the Investigating Officer of the case who was competent to effect the seizure did not went on spot to make the intended recovery and seizure despite previous registration of the Crime number in question. That the alleged supplier Samar Zia has not been arrested in the case till date. That despite previous information, no attempt was made to associate any independent civilian witnesses with the occurrence and the association of the driver and conductor of the bus in question appears to be the attempt to cover the gap.

The learned counsel also submitted that the copies of the documents (running pages 27 to 31) placed on the complaint regarding alleged transfer of money from petitioner to co-accused Saqib Zaffar instead show the payments made to the present petitioner. He also submitted that the non-apprehension of the alleged supplier namely Samar Zia also doubts the genuineness of the complaint.

7. The learned counsel for the petitioner in support of his contentions placed reliance on the judgments cited as ***“State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh”, 2022 SCC Online SC 828, “Saddam Hussan Qureshi vs Union of India & Anr”, 2024 SCC Online Bom 1096, “Mohd Aslam Chiko vs Narcotics Control Bureau” 2023 SCC Online Del 5733, “Jasbir Singh vs Narcotics Control Bureau” 2023 SCC Online Del 134, “Rahul Kumar vs State of Uttarakhand & Anr” (Criminal Revision No. 326 of 2022, decided on 22.07.2022), “Akashdeep Singh Alias Akash vs State of Punjab” (CRM-M-41574 of 2022 (O&M), decided on***

27.03.2023) and “Yugraj Singh vs Union Territory of J&K & Anr” (Bail App No. 252/2025, decided on 25.03.2025).

8. In **“State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh”**, it has been *inter alia* held that:

“Applicability of Section 27A NDPS Act is seriously questionable. No recovery from respondent and quantity in question being also intermediate quantity, rigors of Section 37 NDPS Act do not apply- CCTV footage and call data records cannot provide sustenance to prosecution case against respondent. Further, prima facie, respondent might not have committed offence charged with and, looking to his past history, nothing on record to show that he was likely to commit offence under NDPS Act while on bail. Hence, respondent rightly entitled for bail on stringent conditions and imposed additional conditions.”

9. In **“Saddam Hussan Qureshi vs Union of India & Anr”** in which 132,000 tablets of Alprazolam and 2400 bottles of Codeine-based Onerex Cough Syrup (CBCS) was recovered, it has been *inter alia* held in the facts and circumstances of the case that:

“ Applicant was in direct contact with a wanted accused person- Applicant made a voluntary statement under Section 67 of the NDPS Act-Two circumstances (contact with wanted accused and voluntary statement) do not connect the Applicant to the offence in question. No contraband was found in possession of the Applicant-Reasonable grounds for believing the Applicant is not involved in the offence. Applicant has no antecedents under the NDPS Act.”

10. In **“Mohd Aslam Chiko vs Narcotics Control Bureau”** it has been *inter alia* held that:

“Prosecution’s reliance on Section 67 statements and financial transactions-Section 67 statements held inadmissible in light of Tofan Singh vs State of Tamil Nadu (2021) 4 SCC 1-Financial transactions found unrelated to drugs trafficking.”

11. In **“Jasbir Singh vs Narcotics Control Bureau”**, it has been *inter alia* held that:

“ 91. The Respondent has relied on the bank account statements of Accused No. 5/Shradha Surana, and that of one Neil Singhvi, cousin of Shradha Surana, and allegedly controlled by her to show that there were bank transactions of the Applicant with Shradha Surana and Neil Singhvi. It is the case of the Respondent itself that the Applicant

was in a relationship with Shradha Surana for the past few years and the bank transactions could be in normal course of events.

92. The said bank account transactions cannot by themselves be used to place any culpability upon the Applicant in light of [Section 34 IEA](#) which mandates that even though books of accounts, such as bank-account statements, can be proved, there is a requirement for other evidence to prove an allegation with respect to such books of accounts against a person. Merely because there are transactions between the Applicant and Accused No.5/Shradha Surana, the same do not automatically prove that the transactions were related to the alleged offences or that they implicate the Applicant of conspiracy with other accused persons.

12. In ***“Rahul Kumar vs State of Uttarakhand & Anr”***, it has been *inter alia* held that:

“Indulging in the activities itself as enumerated under Section 27A is not punishable under Section 27A. What is punishable is financing those activities. It is the case of the prosecution in the instant case that the revisionist was in possession of smack, which he wanted to sell the co-accused. It is not near to the word “financing”. It may be noted that at the time of remand itself, on behalf of the revisionist, objection was raised that there are not sufficient grounds to remand the revisionist under Section 27A of the Act.”

13. In ***“Akashdeep Singh Alias Akash vs State of Punjab”***, it has been *inter alia* held that:

“Solitary transactions do not amount to financing illicit traffic in narcotics as the term “trafficking” connotes continuity and regularity in dealing. Mere recovery of cash from a co-accused does not establish involvement in financing illicit drug trafficking. Applicability of Section 27A in such cases is questionable, and the rigors of Section 37 NDPS Act do not apply.”

14. In ***“Yugraj Singh vs Union Territory of J&K & Anr”***, it has been *inter alia* held that:

“14. So far as aforesaid disclosure statement of petitioner and statements of the Police witnesses, wherein they have deposed about the details narrated by accused Harpreet Singh and Ranjeet Singh showing involvement of petitioner is concerned, the same are prima facie hit by provisions contained in Section 26 of the Evidence Act. As per the said provision, the confession made by any person while he is in custody of police officer, unless it is made in immediate presence of a Magistrate is in-admissible in evidence. In the present case, the petitioner has not made the disclosure statement in presence of a Magistrate, but the same has been recorded by a Police Official while he was in custody. Even provisions contained in Section 27 of the Evidence Act, which make the disclosure statement made by an accused before the Police officer while in custody admissible in evidence will not come to the rescue of the prosecution case, as the conditions stipulated in the said provision are not satisfied in the

instant case. As per Section 27 of the Evidence Act, unless the disclosure made by an accused leads to discovery of a fact, the same does not become admissible in evidence. In the present case, no recovery has been effected pursuant to the disclosure statement made by petitioner. Thus, his disclosure statement is prima facie hit by Section 26 of Evidence Act, and the same appears to be in-admissible in evidence.

15. So far as details narrated by the co-accused to the Police Officials about involvement of the petitioner are concerned, the same are also hit by provisions of Section 26 of the Evidence Act and are inadmissible in evidence. The Supreme Court in case titled as **Tofan Singh vs. State of Tamil Nadu reported in 2021 (4) SCC 1** has held that confessional statement made by an accused against co-accused before Police Official is in-admissible in evidence. Again this Court in case titled as *Rayees Ahmad Dar vs. UT of J&K* (Bail App No. 05/2022) decided on 21.05.2022 has held that statement of a co-accused while he was in Police Custody in the presence of Police Officials is inadmissible in evidence. Thus, even the details about involvement of petitioner in the alleged crime deposed to by the co-accused to the Police Officials are not enough to implicate the petitioner.

16. The only material that connects the petitioner to the alleged crime is the CDR, which has been collected by the Investigating Agency during the investigation of the case. As per the analysis of the CDR, it appears that the petitioner was in touch with the co-accused during the relevant period. The question arises as to whether the same would be sufficient to prima facie hold the petitioner guilty of having committed offence under Section 27-A of NDPS Act. In the opinion of this Court, CDR details showing contact between the petitioner and the co-accused, without there being any voice recording relating to conversation between them, may not be sufficient to convict the petitioner for offence under Section 27-A of NDPS Act, though it raises a suspicion about his involvement in the alleged crime.

17. In the face of the aforesaid nature of material on record against the petitioner, it can safely be stated that there are reasonable grounds to believe that the petitioner is not guilty of offence under Section 27-A of NDPS Act. Thus, he has been able to carve out a prima facie case for grant of bail.

18. The respondents have not placed on record any material to show that the petitioner has been involved in similar offences in the previous past. Though it has been alleged that the petitioner has been indulging in trafficking of illicit drugs, yet no details in this regard have been furnished by the respondents. Thus, it cannot be stated that the petitioner, if enlarged on bail, is likely to commit any offence while on bail. Apart from this co-accused, Yaqoob Ali has already been enlarged on bail by the learned trial court. Therefore, on the ground of parity also, the petitioner is entitled to grant of bail.

15. Learned counsel for the respondent-Bureau, however, in rebuttal argued that the instant subsequent application filed by the petitioner deserves to be out-rightly rejected as he is involved in the commission of offences punishable under Sections 21, 22, 27A r/w 29 NDPS Act. That he is

involved in the financing of illicit trade in Narcotic Drugs and Psychotropic Substances punishable under Section 27A NDPS Act, also.

16. The learned counsel for the respondent-Bureau submitted that pursuant to the disclosure of the co-accused Saqib Zaffar made during his statement recorded under Section 67 of NDPS Act as well as during his own such statement, the bank transactions regarding transfer of amounts from his account to the account of the co-accused Saqib Zaffar as also the CDR came to be identified which makes such disclosure as admissible under law. The learned Deputy Solicitor General of India submitted that since the offences punishable under Sections 21 and 22 are prima facie established against the petitioner in connection with commercial quantity under conspiracy, therefore, the instant bail petition is hit by the provisions of Section 37 of NDPS Act. He further submitted that the offence under Section 27A NDPS regarding financing of illicit trade is independently covered under the provisions of Section 37 of the NDPS Act. He contended that the liberty of the petitioner stands curtailed in accordance with the law owing to his involvement in the commission of offences under NDPS Act in relation to commercial quantity as also his involvement under Section 27A of the NDPS Act.

He submitted that menace of drugs has eaten the vitals of the society and the new generation is being dragged to the drug addiction at a rapid growth. He further submitted that the petitioner if enlarged on bail shall repeat the commission of crime and shall also misuse the concession by absconding at the trial. The learned counsel for the respondents prayed for rejection of this successive bail petition too.

17. Keeping in view the perusal of the instant successive bail petition, the objections filed in rebuttal by learned DSGI, the scanned copy of the trial court record especially the statements of prosecution witnesses examined during investigation of the case and the consideration of the rival arguments advanced on both the sides, this court without making any comment regarding the merits of the case is of the opinion that it may meet the ends of justice in case the petitioner-accused is admitted to bail in the crime number in question subject to some reasonable terms and conditions.
18. A criminal court while recording his satisfaction as to whether there appear “reasonable grounds” of involvement of an accused in the commission of an offense attracting the bar in terms of provisions of Section 37 NDPS Act, has to use his discretion in a judicious manner so that no miscarriage of justice happens either by grant of bail or by denial of the same.

The “reasonable grounds” of involvement can be inferred from the facts and circumstances of the case especially, the nature of the evidence. The Court is supposed to consider the broader probabilities to reach its supposition regarding the existence of reasonable grounds of involvement of the accused.

The words “reasonable grounds” cannot be read to mean proved as used in ‘*Bharatiya Sakshya Adhiniyam*’. Such an interpretation would in my opinion set at naught the power vested in a court to grant bail pending trial.

The expression “reasonable grounds” would obviously mean something more than mere suspicion and conjectures and something less than proof. It would necessarily mean such grounds or material that would

prima facie enable a person of ordinary prudence to believe that the accused is or is not guilty.

It is no doubt true that the object of the legislation of such disabling provisions is to prevent the offenders from being immediately granted bail in heinous offences. In this view of the matter, the court is required to examine the material placed before it and then to arrive at a conclusion that there exist “reasonable grounds” to believe that accused is guilty or not guilty

The “reasonable grounds” would vary from case to case and from one accused to another. What may be reasonable in one case may not be so in another and therefore the words “reasonable grounds” cannot, on account of a discretion vested in the court, be put into a straight-jacket. Each case would have to be dealt with and examined on its own facts and decided keeping in view the mandate of law. The consideration at the time of taking up of the bail application for disposal is different from the consideration adopted at the end of the trial for holding an accused guilty or not guilty. In considering an application for bail, court is not required to conduct a preliminary trial. The Courts while deciding bail applications will be traversing beyond their ambit and would be exceeding their limit of functions if they engage themselves in discovering the guilt or innocence of the accused which can only be determined at the trial stage. The courts should not go at a tangent in order to find out the possible excuses for grant bail. Whether there are “reasonable grounds” or not is the question which must be decided judicially, that is to say there should be some tangible evidence on which the Court might come to the conclusion that if

unrebutted, the accused might be convicted. Whether there are reasonable grounds for believing that a person is guilty of such an offence depends on what evidence is offered by the prosecution to the charge against him.

In order to come to the conclusion, that a person is guilty, the Court must consider the evidence which if unrebutted may lead to conclusion that the charge against him stands proved and cannot unjustifiably hold that there are “reasonable grounds” for believing that he is guilty. It is a settled position of law that the real question whether there are reasonable grounds for believing that a person is guilty of offences attracting bar under Section 37 NDPS Act, depends upon what evidence is offered by the prosecution to prove the charge against him. While reaching such conclusion, the Court must consider the nature and character of evidence against him.

19. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of

Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

20. In State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447, the Hon'ble Apex Court has held, "basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

21. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:

- i. The judicial discretion must be exercised with the utmost care and circumspection;
- ii. That the Court must duly consider the nature and the circumstances of the case;
- iii. Reasonable apprehension of the witnesses being tampered;
- iv. Investigation being hampered or
- v. The judicial process being impeded or subverted.
- vi. The liberty of an individual must be balanced against the larger interests of the society and the State.
- vii. The court must weigh in the judicial scales, pros and cons varying from case to case.
- viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
- ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- x. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.
- xi. The facts and circumstances of the case play a predominant role.

22. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 1632**, referred to the following extract from the American Jurisprudence having bearing on the subject of bail.

"where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each

particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail."

23. It has been laid down by the Hon'ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation AIR 2012 SC 830** at Para 14 of its Judgment as under:-

*14) "In bail applications, generally, it has been laid down from the earliest times that the **object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail.** The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that **punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. **From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test.** In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of **prevention being the object of a refusal of bail**, one must not lose sight of the fact that **any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.**"*

24. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon'ble Apex Court cited as **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40** in which the bail was granted to the appellant who was involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference:-

“24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”

“25. The provisions of [Cr.P.C.](#) confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

25. In **“Prahlaad Singh Bhati v. NCT, Delhi”, (2001) 4 SCC 280**, the Hon’ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

26. The observations of the Hon'ble Apex Court laid down in "***State of U.P. v. Amarmani Tripathi***", (2005) 8 SCC 21 at para 18 of the judgment also deserve a needful mention:

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

27. The Hon'ble Apex Court in Sanjay Chandra's case cited supra has *inter alia* held at para 40 of the judgment, "the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required."

28. The Hon'ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharastra decided on 02/12/2010, AIR 2011 SC**

312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online

98, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been *inter alia* observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

- 29.** This Court in the facts and circumstances of the case is of the opinion only for the limited purpose of consideration of this bail application that there appear no reasonable grounds of involvement of the petitioner/accused in the commission of offences punishable under Sections 8/21, 22, 27A r/w 29 NDPS Act, under which the final complaint has been filed by the respondent-Bureau before the competent trial Court. There is nothing on record to suggest that the petitioner if admitted to bail will jump over the concession by absconding at the trial or repeating the commission of crime.
- 30.** For the foregoing discussion and without touching the merits of the instant case bearing Crime No. 24/2024 of Norcotics Control Bureau, Jammu Zonal Unit, Jammu under Sections 8/21, 22, 27A r/w 29 NDPS Act, which obviously shall be the subject matter of the final disposal of the trial complaint, the petitioner-accused is admitted to bail, subject to his

furnishing surety and personal bonds to the tune of Rupees One lac each (surety bond of Rupees One lac to be furnished by two sureties from amongst the relatives of the petitioner-accused each liable to the extent of Rupees fifty thousands) respectively to the satisfaction of the learned trial court and the superintendent of jail concerned. This order shall however, be subject to the following conditions:-

- i) The petitioner-accused shall remain punctual at the trial of the case.
- ii) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any of the unexamined complaint's witnesses so as to dissuade them from making their factual statements at the trial.
- iii) The Petitioner shall not leave the limits of UT of J&K without the prior permission of the learned trial court.
- iv) The Petitioner shall not repeat the commission of any crime.

31. In case the requisite surety bonds are furnished to the satisfaction of the learned trial court and duly attested, a formal release order shall be issued by learned trial court directing the release of the petitioner-accused from the place of his lodgment in Crime No. 24/2024 of Narcotics Control Bureau, Jammu Zonal Unit, Jammu, subject to petitioner's furnishing of personal bond in the amount of Rupees One lac to the satisfaction of the Superintendent of jail concerned.

32. Learned trial court shall be competent to proceed against the petitioner-accused in terms of provisions of sections 491 and 492 BNSS in the event of violation of any bail conditions.

33. Nothing in this order shall be construed as any interference with or pre-judging of the merits of the case which obviously shall be subject matter of the final outcome of the trial case.

34. *Disposed of.*

(Mohd. Yousuf Wani)
Judge

Jammu
03.12.2025
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes

