

Sr. No. 43

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl A(D) No. 8/2025
CrlM No. 232/2025

Reserved on :- 02.07.2025
Pronounced on :- 11.07.2025

Arshad Ahmed Allaie, Age 38 years Petitioner/Appellant(s)
S/o Mohd. Akram Allaie
R/o Ashan Mohalla Sangam Shopian
At present lodged in Cenral Jail Kot
Bhalwal, Jammu.

Through:- Mr. I.H. Bhat, Advocate

V/s

U.T. of Jammu & KashmirRespondent(s)
Through SHO P/S City, Jammu.

Through:- Mrs. Monika Kohli, Sr. AAG

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

JUDGMENT

Per:- Shahzad Azeem, J

1. This appeal is directed against the order dated 24.10.2024 passed by the Court of learned 3rd Additional Sessions Judge, Jammu (Designated Court under TADA POTA UA (P) Act Cases) (hereinafter referred to as '**the trial Court**'), in application titled "*Arshad Ahmed Allaie Vs. U.T. through SHO, Police Station, City*", whereby and whereunder application for grant of bail in FIR No. 38/2019 under Sections 8/21/22/29 of NDPS

Act and Sections 13/17/21/39 and 40 of UA (P) Act of Police Station City, Jammu, came to be dismissed.

FACTUAL MATRIX

2. Before coming to the grounds of challenge and rival submissions made, it is pertinent to give the factual matrix relevant for disposal of the appeal, which are thus summarized as under:-

3. From perusal of the record, it is seen that on, 27.05.2019 at 2107 hours a written docket, endorsed by SI-Rahul Dogra, I/C PP Hari Market, Jammu, was received at Police Station City, Jammu to the effect that he had laid a Naka at Vivekananda Chowk, Jammu and during checking at about 1915 hours, one Creta Car (white colour without Number) was spotted coming from JP Chowk towards Dance Gate and when it was intercepted near Naka point by the police party, two persons were found to have been travelling and during questioning, the Driver disclosed his name as, Arshad Ahmed Allaie (appellant herein), while the other occupant disclosed his name as, Fayaz Ahmed Dar, residents of Shopian and Anantnag, respectively.

4. On checking of the vehicle, one polythene pink coloured bag containing about 260 gms heroine was found and also huge cash in the shape of bundles came to be recovered from the bag. This information lead to the registration of a formal case being FIR No. 38/2019 under Sections 8/21/22/25/27-A/29 NDPS Act at Police Station City, Jammu and the investigation was taken up.

5. During investigation, despite undertaking other codal formalities cash amounting to the tune of Rs. 12,00,560/- was recovered and seized,

sample from the seized contraband drawn, statement of witnesses was recorded. When accused alleged to have been put to sustained interrogation, they disclosed the names of (i) Mohd. Altaf @ Hafiz (ii) Laddi Ram (iii) Mohd. Latief Dar, and (iv) Mohd. Shafi Bhat.

6. During the investigation, said Mohd. Altaf @ Hafiz whose name was disclosed by the accused was allegedly arrested on, 21.06.2019 and on his alleged disclosure, it came to fore that said person was involved in trafficking of heroine, which was being pumped from across the border (Pakistan) by one Mohd. Razak @ Billa and one Shahni. It has been further disclosed by said Mohd. Altaf @ Hafiz that he was under the command to hand over the consignments of heroine received from across the border to Arshad Ahmed Allaie (appellant) and in this process said person handed over as many as 15 packets of heroine to the appellant herein, in the form of three consignments.

7. On progression of investigation, some startling revelation alleged to have been surfaced to the fact that appellant had come in contact with one Naseer Ahmed, the brother of accused Fayaz Ahmed Dar, presently operating from Rawalpindi (Pakistan), and stated to be a trained terrorist and one Aijaz Ahmed @ Ranga, who is also an associate of said Naseer Ahmed and being trained terrorist is also operating from Rawalpindi, Pakistan. In this way, it has been found that appellant herein was in constant touch with Naseer Ahmed, Aijaz Ahmed @ Ranga, Mohd. Razaq and Shahni, who alleged to have been settled in Pakistan and are involved in cross border smuggling of drugs involving transaction worth crores.

8. On 16.07.2019, Mohd. Latief Dar was also arrested who during interrogation too admitted having contacts with the militant organization, which is operating in Kashmir and using him for financing illicit trafficking of narcotics from across the border, which was being used for raising funds for terrorist activities in the State. It has been further found during his interrogation that said Mohd. Latief Dar was delivering Hawala money received from Arshad Ahmed Allaie (appellant) to HM militant Mohd. Shafi Bhat resident of Bijbehara on the instructions of Fayaz Ahmed Rather @ Shahid S/o Mohd. Jamal R/o AshmujiKulgam @ Pakistan (HM Financer).

9. Accordingly, on 25.07.2019, Mohd. Shafi Bhat was also arrested who too made the disclosure statement and it came to fore that in an organized way the accused and their aides are financing illicit trafficking of narcotics from across the border which was being used for raising funds for terrorist activities etc. From the Bank statements of the accused including the appellant, the transactions have been found to have been made in respect of Hawala money amongst the accused, which was generated from the proceeds of illicit trafficking of narcotics drugs, therefore, seven bank accounts containing total Rs. 24 lacs have been freezed and a cash amount to the tune of Rs. 12,00,560/- belonging to the appellant herein has been seized.

10. Although, there are minute details of the amount seized and recovered during investigation, which is running into several lacs, but it is relevant to note that there is a specific mention that accused Laddi Ram had deposited in the account of appellant herein on different dates a total

amount of Rs. 22 lacs and also 260 gms of heroine came to be seized from him. It is important to note that from the record it appears that appellant herein used to deliver the consignment of heroine receive from Mohd. Altaf @ Hafiz to Laddi Ram, who used to sell the same to the youth of District Kathua and also outside the U.T. of J&K.

11. Therefore, during investigation sufficient material has been collected in the shape of details of bank accounts, CDRs, statements of witnesses etc, which would *prima facie* establish that the appellant along with co-accused were in contact with the terrorist who were said to have been operating from across the border and were instrumental in cross border narco trafficking, so as to generate the funds for bringing unrest in the country.

12. Therefore, on completion of the investigation, final police report was laid before the trial Court on 28.02.2020 and, accordingly, the trial Court had vide order dated 02.06.2022, drawn formal charges against the appellant along with other co-accused under Sections 8, 21, 22, 29 of NDPS Act and Sections 13, 17, 21, 39 & 40 of UA (P) Act and thus, trial commenced.

13. It is noteworthy that scanned/digitized record of the trial Court was received on, 24.04.2025 and by that time the trial Court has examined, as many as, 15 witnesses out of listed 64 prosecution witnesses.

GROUND & SUBMISSIONS

14. The contention of the appellant is that he has been booked in a false and frivolous case whereas till date 14 prosecution witnesses have been examined and the remaining witnesses are only formal witnesses and does

not pertain to him. According to the appellant, the 04 (four) most important witnesses recorded by the trial Court did not connect the appellant with the commission of alleged crime and there is no other left over important witness against the appellant who can now support the case of the prosecution. Therefore, from the testimony of recorded witnesses, who are the material witnesses and are the only relevant witnesses in so far as the appellant is concerned, there is no possibility that appellant may suffer conviction, therefore, further incarceration amounts to the violation of his fundamental rights.

15. Further thrust of the appellant is mainly on the delayed trial and according to him, it will further take about 20 years to complete it, therefore, while submitting that the rigors in granting bail for offences under UA(P) and NDPS Act are not applicable in his case, the learned counsel for the appellant has cited plethora of judgments, where the intervention has been shown on account of delayed trial.

16. On the other hand, the respondents have filed the status report in opposition to the contention of the appellant and prayed for rejection of the bail application by delineating meticulously in the status report the entire prosecution story from the arrest of the appellant till filing of the charge sheet before the trial Court.

17. We do not wish to burden this judgment with the minute details given in the status report filed by the respondents, however, it is suffice to say that from the perusal of the status report, it appears that meticulous and scientific investigation has been carried out to unearth the alleged involvement of appellant in terrorist related activities and drug trafficking

and in this regard, sufficient proof in the shape of details of bank accounts, call details, statements of witnesses etc have been meticulously mentioned therein, which are in tune with the facts we have already taken note of hereinbefore.

ANALYSIS

18. Indisputably, the formal charges against the appellant have been framed on 02.06.2022 after drawing prima facie satisfaction regarding commission of alleged offences, on the basis of material available on record by the trial Court, under Sections 8, 21, 22, 29 of NDPS Act and Sections 13, 17, 21, 39 & 40 of UA(P) Act.

19. Sections 17 and 21 falls in Chapter IV of UA(P) Act, which pertains to the punishment for raising funds for terrorist Act and holding proceeds of terrorism. Similarly, Sections 39 and 40 falls in Chapter VI of UA(P) Act and pertains to support given to a terrorist organization and raising fund for a terrorist organization. Accordingly, all offences for commission whereof appellant is facing trial covered under chapter IV and VI of UA(P) Act, thus, rigors and restrictions of Sub-Section (5) of Section 43-D of UA(P) Act would apply to the facts of this case.

20. At the same time, the positive case of the prosecution is that from the bag of the appellant, heroine weighing 260 gms, came to be recovered, besides a cash amount of Rs. 12,00,560/- was also recovered and seized, therefore, same being commercial quantity, thus, rigors and restrictions under Section 37 of NDPS Act would equally apply to the case on hand.

21. Thus, before considering the plea for granting bail, the appellant, has to cross the twin conditions which are almost *pari materia* as

enumerated under Section 37 of NDPS Act and Section 43-D (5) of UA(P) Act.

22. The stringent bail provisions under both Acts make it highly challenging to secure bail unless the accused can demonstrate a strong case of innocence or procedural lapses by the prosecution.

23. Turning to the case on hand, the appellant though have made wholesale assertion that the material witnesses have already been recorded, but nothing has come against him which could connect with commission of alleged offence, but no detail or foundation has been laid in the appeal.

24. We are conscious of the fact that while dealing with the bail application, the Court is only required to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise and the Court is not required to record a finding based on proof beyond doubt or return a opinion upon the probative value of the evidence of the witnesses which may be in progress. The appellant is on admission to say that in so far as he is concerned, the material witnesses have already been record, therefore, assuming for a moment that appellant is right in saying so, when we just have a cursory look on the statements of PW-1, Rahul Dogra, PW-2 Mohd. Salim, PW-5 Des Raj, PW-6 Kuljinder Singh, PW-7 Lekh Raj and PW-8 Ajay Kumar, who are stated to be the material witnesses, their testimonies *prima facie* shows the involvement of appellant in commission of alleged offences and that's all we want to

record at this stage without going further deep into it in view of the nature of present proceedings before us.

25. As per the prosecution case and the material on record, the appellant alleged to have been involved in subversive activities connected with the drug trafficking and raising of funds in an organized manner so as to bring unrest within the country and to this effect at first stage while framing the charges against the appellant *prima facie* material was found and also the witnesses so far recorded on cursory look, *prima facie* supports the case of prosecution.

26. As extensively discussed hereinbefore that from the material collected during investigation and so also while framing the charges *prima facie* case against the appellant was made out, which led to framing of formal charges against him under the provisions of UA(P) Act and NDPS Act, respectively. It is trite law that in order to arrive at the conclusion as to whether there is a *prima facie* case, the requirement of law is that the material collated by the investigating agency in reference to the accusation must prevail until contradicted or disproved by other evidence.

27. It is also beaten law that at the stage of consideration of the bail giving of reasons for grant or non-grant of bail are markedly different from discussing merits or demerits of the evidence. Therefore, the only requirement of law is that Court has to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise and thus, evaluation of evidence, while considering the bail application is not permissible.

28. In so far as the plea raised by the appellant regarding the delayed trial and resultant continuous incarceration is concerned, the law on this point is no more *res integra*. In this regard suffice to say that once the appellant is *prima facie* shown to have involved in such heinous crime, the law regarding the delayed trial or violation of constitutional right of having speedy trial would not come to his rescue, because enlargement in that event would necessarily fraught with danger of indulgence in such activities, particularly when non-state actors in control of all such alleged terrorist related activities and are operating from across the Border.

29. In **Gurwinder Singh Versus State of Punjab and Ors. AIR 2024 SC 952**, while dealing with the case involving terrorist activity observed thus:-

“18. The conventional idea in bail jurisprudence vis- -vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released' - suggests the intention of the Legislature to make bail, the exception and jail, the rule.”

“32. The Appellant's counsel has relied upon the case of KA Najeeb (*supra*) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb's case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial

of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of 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. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.

30. In this regard, the sufficient material gathered during investigation, which is *prima facie* pointer to the fact that appellant was conduit between the terrorist operating across the border and the drug traffickers etc, who are selling the drugs, so as to generate the funds for alleged terrorist related activities.

31. Again Hon'ble Supreme Court in **Union of India Vs. Barakathullah etc 2024 Supreme (Online) (SC) 7442** after taking into consideration law laid down in, **National Investigation Agency Versus Zahoor Ahmed Shah Watali**, elaborated the guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UA(P) Act and in this regard in para 12 of the judgment observed thus:-

“12. The ratio of the said judgment has been consistently followed by this Court in many cases, and recently in *Gurwinder Singh v. State of Punjab and Another (supra)*, in which this court has culled out following guidelines from Watali's Case:

34. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications

under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

- **Meaning of 'Prima facie true' [para 23] :** On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.
- **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared [para 23] :** Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true.

Similar opinion is required to be formed by the Court whilst considering prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

- **Reasoning, necessary but no detailed evaluation of evidence [para 24] :** The exercise to be undertaken by the Court at this stage-of giving reasons for grant or non-grant of bail-is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.
- **Record a finding on broad probabilities, not based on proof beyond doubt [para 24]:** "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."
- **Duration of the limitation under Section 43D(5) [para 26]**

: The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

- Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27] : The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.
- Contents of documents to be presumed as true [para 27]

: The Court must look at the contents of the document and take such document into account as it is.

- Admissibility of documents relied upon by Prosecution cannot be questioned [para 27] : The materials/ evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence..... In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.

32. In so far as the ground of parity on the analogy of co-accused, Fiaz Ahmed is concerned, same cannot be entertained for the simple reason that the order granting bail, in application titled “*Fiaz Ahmed Vs. State of J&K*” came to be passed without taking into consideration the fact that the alleged 260 gms of heroine recovered was a commercial quantity and thus, attracting rigors of Section 37, but the trial Court without adhering and advertent to the mandatory requirement of Section 37 granted the bail.

33. In **Narcotics Control Bureau Vs. Kashif 2025 (2) Supreme 268** Hon’ble Supreme Court while dealing within the compliance of the mandate under 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 in this regard “**Negation of bail is the rule and its grant is an exception.**” It has been further held that

while considering the application for bail, the Court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. Thus, the recording of finding as mandated in Section 37 is a *sine qua non* for granting bail to the accused involved in the offences under the said Act. Similar view has been taken by the Hon'ble Supreme Court in **The State of Meghalaya Vs. Lalrintluanga Sailo and Anr. 2024 (6) Supreme 568.**

34. However, in the case of Fiaz Ahmed, it appears that the trial Court while granting bail has observed the mandatory provision in breach and even did not bother to discuss the ground of its satisfaction despite rigors of Section 37 were applicable.

35. In view of the law governing the subject and material collected during investigation, so much so the evidence of the material witnesses so far recorded, we are satisfied that there is *prima facie* material on record indicating the complicity of the appellant in carrying out the alleged terrorist activities and drug trafficking so as to bring unrest within the country, therefore, at this stage indulgence is unwarranted.

36. For the aforementioned reasons, the bail plea of the appellant is rejected and, consequently, the appeal is *dismissed*.

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

38. Before parting, we are constrained to note that on going through the order dated 24.10.2024 whereby said Fiaz Ahmed was granted bail by the trial Court, despite recovered consignment of heroine weighing 260 gms

falls within ambit of commercial quantity but there is no whisper as to whether or not same falls within commercial quantity, and thus attracts rigors of Sections 37 of NDPS Act. In this regard, para 5 of order dated, 24.10.2024, is noteworthy, which for the facility of reference is reproduced hereunder:-

“Perused the report, charge sheet particularly the charges against the applicant and charges against him are under Section 8/22/29 of NDPS Act and only 260 gms of heroine has been recovered from the possession of the accused on 27.05.2019 since then he is in custody. He has been charged on 02.06.2022 and till date only 08 prosecution witnesses have been examined out of total 64. So, keeping in view the progress of recording of prosecution evidence, there is no prospect of the case concluding before 10 years from the date of occurrence.”

39. The alleged recovery of heroine was 260 gms, which as per the table appended with the NDPS Act falls in entry 56 wherein 5 gms is a small quantity and 250 gms is shown as a commercial quantity. If this be the position then definitely the rigors of Section 37 of NDPS Act with all its rigor applies to the case. At the same time, the observation of the trial Court that there is no prospect of the conclusion of trial before 10 years is not only unwarranted, but is also in contravention to the circulars and notification issued by the High Court from time to time for speedy disposal of the cases.

40. Therefore, the approach of the trial Court in granting bail to the co-accused without taking into consideration the mandatory requirement as envisaged under Section 37 of NDPS Act, calls for immediate remedial measures. Therefore, to that extent we deemed it proper that matter be placed before Lord Chief Justice for desired action.

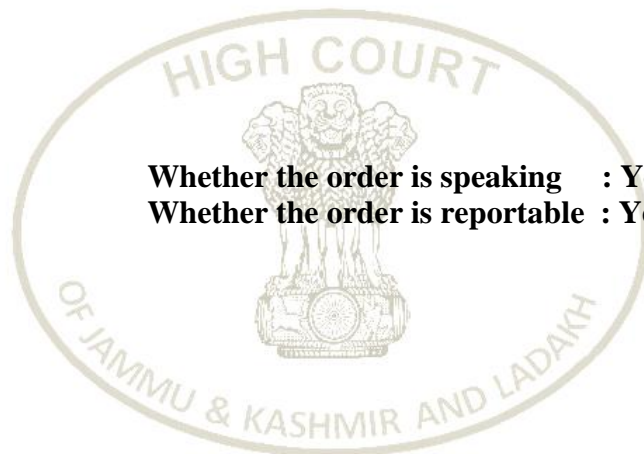
41. Nonetheless, we also hold that the State is being represented by the prosecution, therefore, it was expected of the prosecution to have taken the appropriate legal recourse, but it appears that the prosecution too has slept over the matter. Therefore, to that extent we also recommend the matter be forwarded to the Director General of Police for taking appropriate remedial steps.

42. Learned Registrar General shall take necessary steps for compliance.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

JAMMU
11.07.2025
Mihul



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