

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

Bail App No. 194/2025

Reserved On: 18th of April, 2026.

Pronounced On: 29th of April, 2026.

Uploaded On: 29th of April, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Abdul Rashid Kohli, Age: 45 Years
S/O Satter Mohammad Kohli
R/O Dragger, Karnah, Kupwara
Through his brother, namely,
Mangta Kohli.

... Petitioner(s)

Through: -

Mr S. T. Hussain, Senior Advocate with
Ms Nida Nazir, Advocate.

V/s

Union Territory of Jammu & Kashmir,
Through SHO, Police Station,
Rajbagh, Srinagar.

... Respondents

Through: -

Mr Faheem Nisar Shah, Government Advocate vice
Mr Mohsin-ul-Showkat Qadri, Sr. AAG.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioner, on being aggrieved of the Order dated 5th of August, 2025 passed by the Court of learned Special Judge (NDPS) Cases, Srinagar ("the Trial Court" for brevity); whereby his bail plea has been rejected, has invoked the jurisdiction of this Court seeking his enlargement on bail in a case arising out of FIR No. 17/2023 registered at Police Station Rajbagh, Srinagar, for the commission of offences punishable under Sections 8/21, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and Section 201 of the Indian Penal Code (IPC), wherein the Petitioner, along

with other co-accused, is facing trial for the commission of aforementioned offences before the Trial Court.

Pleadings:

02. The Petitioner, by virtue of the instant Petition, seeks bail, mainly on the grounds that the rigor of Section 37 of the NDPS Act is not applicable in the case of the Petitioner; that, after taking cognizance, the learned Special Judge was transferred, as such, the successor had to hold a *de novo* trial which was mandatory and that this procedure has not been followed in the instant case rendering the trial as vitiated; that, in view of the accusation of cross-border smuggling, the investigating agency had to invoke Section 120-B of CrPC which has not been pressed and even the police report does not mention where the conspiracy was hatched, in which District of Jammu & Kashmir it was hatched, where it was executed and on what material such an inference was drawn; that the Investigating Officer, being an unauthorized person, did not follow the provisions of Section 52-A of the NDPS Act; and that the trial is being conducted for the last more than two years, as such, there was long incarceration of the Petitioner.

03. In opposition, the Respondents have filed their Objections, *inter alia*, stating therein that the accused persons, including the Petitioner herein, pursuant to the aforementioned criminal conspiracy, have smuggled into India, possessed, sold, purchased, transported and financed the commercial quantity of narcotic substance (Heroin) and have committed offences under various Sections of law, whereafter, the charge sheet of the case was produced before the Court of learned Principal Sessions Judge, Srinagar on 9th of September, 2023 which is under trial and many witnesses are yet to be examined; that the Petitioner was found involved in acquiring and transporting of huge consignment of illegal contraband substance (Heroin) and selling the same among the youth of the society; that, if the Petitioner is released on bail, he may again indulge in such activities as he is residing close to the international border linked with POK; that the Petitioner is involved in an offence against the society at large which has

destroyed the youth beyond any repair, inasmuch as, the menace of drug addiction has engulfed the society and is creating havoc to the families which needs to be dealt with a strong fist; and that there are reasonable grounds for believing that the Petitioner would jump the concessions of bail, if granted to him by the Court, as such, the application merits rejection.

Submissions/ Arguments of the parties:

04. Mr S. T. Hussain, the learned Senior Counsel, assisted by Ms Nida Nazir, Advocate, appearing for the Petitioner, submits that there has been no recovery of any contraband substance from the Petitioner in the instant case and that the grounds of arrest were not communicated to the Petitioner at all; that the witnesses so far produced by the Prosecution before the learned Trial Court did not specifically attribute anything towards the Petitioner *qua* criminal conspiracy of smuggling, possessing, purchasing and selling the contraband substance and that mere disclosure statements from other accused cannot amount to conspiracy; and that the Petitioner is entitled to grant of bail in view of his long incarceration of almost three years.

05. Mr Faheem Nisar Shah, the learned Government Advocate, appearing vice Mr Mohsin-ul-Showkat Qadri, learned Senior Additional Advocate General, on behalf of the Respondent-UT, *ex-adverso*, vehemently argued that the charges have been framed against the accused/ Petitioner herein and that the trial of the case is going on before the Trial Court with 18 witnesses out of 33 having been examined thus far; that it has come on evidence before the Trial Court through photographs that the Petitioner was found weighing the contraband substance in the rented accommodation, besides there being Call Detail Records (CDRs) from his Mobile Phone, seized as A-4, in the name of the Petitioner relating to the conspiracy involved in the case; that Section 37 of the NDPS Act can be invoked only in a case where adequate material has been produced before the Trial Court and not on bald grounds/ assertions; and that long

incarceration of the Petitioner cannot, in any manner, be an automatic ground for grant of bail in favour of the Petitioner.

06. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

Factual Background:

07. The case of the Prosecution-Respondent herein, as emanates from the perusal of the record, is that, on 6th of April, 2023, Police Station, Rajbagh received an information through reliable sources to the effect that at Kursoo Bund, Rajbagh, two persons, namely, Sajad Ahmad Badana S/O Aijaz Ahmad Badana R/O Nechaya Karnah, Kupwara and Zaheer Ahmad Tanch S/O Alam Deen Tanch R/O Amrohi Karnah, Kupwara, who are living at Kursoo, Rajbagh in a rented accommodation, are dealing with contraband substances, having procured the same illegally and transported from Karnah to Rajbagh, Srinagar for sale purposes; that, on receipt of this information, a case vide FIR No. 17/2023 under Sections 8/21/29 of the NDPS Act was registered at Police Station Rajbagh.

08. The Police party, upon reaching Kursoo Bund, verified the location of the concerned house and it came to limelight that the said house belonged to one Gh. Mohammad Dar S/O Ab. Khaliq Dar R/O Kursoo Bund, Rajbagh, who has rented out the said three storied house and it was established that Sajad Ahmad Badana S/O Ajaz Ahmad Badana R/O Nechaya Karnah, Kupwara is putting up as a tenant in the set of two rooms and one kitchen bathroom in the second storey of the house; that, upon reaching the said location, two persons, who disclosed their identity as Sajad Ahmad Badana S/O Ajaz Ahmad Badana R/O Nechaya Karnah, Kupwara and Zaheer Ahmad Tanch S/O Alamdin Tanch R/O Amrohi, Karnah were found present in the room, whereafter notice under Section 50 of the NDPS Act was served upon both of them in presence of Magistrate and witnesses; and that, accordingly, search was carried out which was photographed and, during the search of the room, a grey colour bag along

with another black colour bag, filled with 11 polyethene packets containing contraband Heroin like substance were recovered hidden from under a bed.

09. During further search, another bag containing Indian currency of 200, 500 and 2000 denomination notes was found hidden under the same bed; that the seized contraband was weighed on the electronic scale (*Kanda*) which was found to be 11 Kgs in total and each packet of Heroin was weighed separately and found 01 Kg each, besides, the seized cash was also counted and found as Rs. 11,82,500/- total, in presence of a Magistrate and other witnesses and, accordingly, seizure memo/ *Fard-e-Wazan* (Weighing Memo) was prepared on spot; that, during the personal search of Sajad Ahmad Badhana (Accused No.1) and Zaheer Ahmad Tanch (Accused No. 2), three Mobile Phones; one from Accused No.01 bearing IMEI No.356890804732490 and two from Accused No. 2 bearing IMEI No. 860109061946540 and No. 861175053251870, along with some cash and identity cards, Bank ATM cards were recovered from their possession; and, accordingly, search memo was prepared, international WhatsApp contacts found in the Mobile Phones were forwarded to ESU South, Srinagar for account preservation and EDR, phones were sealed on spot and marked as exhibit C1, C2 and C3.

10. The aforementioned accused persons, upon being questioned, revealed that they, along with their co-conspirators, had procured a significant quantity of narcotics from a person, namely, Nazir Bhai in Pakistan; that the narcotics were then transported from Karnah to Srinagar by Accused No. 01 with the assistance of other associates in a Scorpio vehicle bearing registration number JK01Q-4141 concealed in a spare wheel compartment (Stepney) and that it was further disclosed that Accused No. 1 had already sold some portion of these narcotics in a Tata Taigo vehicle with registration number JK09B-3619; that both vehicles were found parked outside the compound of rented accommodation of Accused No. 01 and, subsequently, on being searched, digital weighing machine and

open spare wheel were found in the vehicle, whereafter, all the recoveries were seized in the instant case and seizure memos were prepared on spot, site plan was drafted and the statements of witnesses were recorded; that both the accused individuals, found involved in the commission of crime, were arrested and an arrest memo was prepared on spot.

11. During the course of further investigation, the accused, namely, Sajad Ah. Badhana (Accused No. 1) made a voluntary disclosure before a Magistrate that he, in conspiracy with Zaheer Ahmad Tanch (Accused No. 2), Bashir Ahmad Tanch (Accused No. 3), Ab. Rashid Kohli (Accused No. 4)-**Petitioner herein** and Khayal Shafi Badhana (Accused No.7), procured heroine from Nazir Ahmad S/O Siraj Deen R/O Amrohi Karnah A/P Muzaffarabad POK (Accused No. 8) and transported it to Srinagar from Karnah in Scorpio vehicle bearing No. JK01Q 4141, where he sold this Heroine to Accused Nos.5 and 6 using vehicle Tata Tiago bearing No JK09B 3619 against Cash of more than 08 lakhs INR, out of which some amount was deposited by him in his bank account, moreover, Gairat Ali Bajard (Accused No. 5) transferred Rs.15, 000/- in his bank account using net banking; that the Accused No. 2 also made a voluntary disclosure before the Magistrate that they, in conspiracy with Bashir Ahmad Tanch (Accused No.3), Ab. Rashid Kohli (Accused No.4)-**Petitioner herein** and Khayal Shafi Badhana (Accused No.7), procured heroine from Nazir Ahmad S/O Siraj Deen R/O Amrohi, Karnah A/P Muzaffarabad POK (Accused No. 8) and got it transported to Srinagar from Karnah in Scorpio vehicle driven by (Accused No.1), where Accused No.1 sold some of this Heroine to Accused Nos.05 and 06 against cash of more than Rs. 08 lakhs; that, upon this discloser, Accused Nos. 03, 04 (Petitioner herein), 05, 06, 07 and 08 were found involved in the instant case, whereafter, they were arrested, except Accused No. 7 who was at large. Upon conclusion of the investigation, the charge sheet was laid before the Court of learned Principal Sessions Judge, Srinagar on 9th of September, 2023 which is under trial and many witnesses are yet to be examined.

Proceedings before the Trial Court:

12. The Petitioner, as accused No.4, was charge-sheeted on 12th of October, 2023 by the Trial Court for the commission of offences punishable under Sections 8/21/29 NDPS Act, with the accusation that he abetted along with other accused to procure contraband from one Nazir Bhat (absconding accused) from POK under a criminal conspiracy and used to transport the same from Karnah to Srinagar; that he used to share his location through phone with accused Nos. 2 and 3 and on 6th of April, 2023 11 packets weighing one Kg each of heroine were recovered from their rented house at Kursoo, Rajbagh, besides an amount of Rs. 11,00,000/-, and that he was in touch with co-accused through WhatsApp to discuss with regard to the narcotics.

13. It appears that the Petitioner, along with other accused, before approaching this Court, had earlier filed an application before the Trial Court seeking grant of bail in his favour, however, the Trial Court did not find favour with the plea so raised and rejected the application for bail vide Order dated 5th of August, 2025, *inter alia*, on the ground that this was not a simple drug case, but looks like cross-border smuggling which can even touch on bigger problems like funding bad activities, besides, the rigors of Section 37 of the NDPS Act have not been satisfied in the instant case. The Trial Court also, while making reference to the law laid down by the Hon'ble Supreme Court relating to compliance of the mandate of Section 37 of the NDPS Act, held that where the offence is punishable with minimum sentence of 10 years, the accused shall generally be not released on bail and that, in this regard, **'negation of bail is the rule and its grant is an exception'**.

Analysis:

14. On perusal of the record of the case received from the Trial Court, it is apparent that commercial quantity of the contraband was not recovered or seized from the Petitioner herein. The Petitioner essentially

has been charged of the offence punishable under Section 29 of the NDPS Act, which provides as under:

“29. Punishment for abetment and criminal conspiracy:

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

15. The contention of the learned Senior Counsel appearing for the Petitioner that the accused was not charged of the commission of offence punishable under Section 120-B IPC, i.e., criminal conspiracy, being misconceived, is not tenable in view of the fact that Section 29 of the NDPS Act is almost *pari materia* in its spirit to Section 120-B IPC.

16. The Petitioner has been charged for the commission of the offences on the basis of the disclosure statements made by accused No. 1 and 2, from whom the contraband was recovered and seized, with the accusation that he had entered into a conspiracy with them for procurement of the seized contraband from POK from the absconding accused-Nazir Bhai and that he had made calls from his Mobile Phone to the accused No. 1 and 2 and shared his location to them around the time of seizure and recovery. Therefore, the only evidence against the Petitioner is the statements made in their disclosures by the co-accused No. 1 and 2 and the

calls made by him to them. Without any other evidence from CDRs showing contact between an accused and a co-accused are not sufficient to establish a nexus with drug trafficking, especially without voice recording or transcripts of the conversation. As per the Prosecution Story, there is neither any recording nor any transcript of the conversation on the file, as such, call logs alone cannot prove a criminal conspiracy of sale or transportation of drugs.

17. Having regard to the commercial quantity of seized contraband in the instant case but not from the Petitioner, who had been charged to have abetted the main accused under a conspiracy, applicability of rigor of bail has to be examined. In this regard, Section 37 of the NDPS Act, being relevant, is reproduced hereunder:

“37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]”

18. Keeping in view the mandate of Section 37 of the NDPS Act, it shall be fruitful to ascertain the legal position on the subject. In this

behalf, reference can be made to a Judgment of the Apex Court passed in case titled '**Tofan Singh v. State of Tamil Nadu**', reported as '**AIR 2020 Supreme Court 5592**', wherein it was held that the statements of co-accused recorded under Section 67 of the NDPS Act are inadmissible, if the phone records are the only link and that they fail to meet the reasonable ground test under Section 37 of the NDPS Act. Likewise, the High Court of Delhi in a case titled '**Vinay Dua v. State Government of NCT of Delhi**', passed in **BAIL APPLN No. 900/2025** decided on 11th of June, 2025, has also held that mere WhatsApp chats and phone calls with co-accused are not enough to deny bail under the NDPS Act.

Conclusions:

19. Since, in the present case, the Petitioner as an accused was not found in possession of any contraband material and the only evidence against him are the disclosure statements made by other co-accused, backed by phone logs, therefore, in the considered opinion of this Court, the accused-Petitioner is entitled to be granted bail, in that, the test of reasonable grounds to deny bail as per the rigor of Section 37 of the NDPS Act is not applicable to the case of the Petitioner herein.

20. For the foregoing reasons, the instant Bail Application is **allowed** and the Petitioner is admitted to be released on bail, subject to the following conditions:

- i. The Petitioner shall furnish bail bonds to the tune of Rs. 50,000/-, along with surety in the like amount, to the satisfaction of the Trial Court;
- ii. The Petitioner shall not leave the country and, if the Petitioner already has a passport, he shall surrender the same to the Trial Court forthwith;
- iii. The Petitioner shall furnish to the SHO concerned his Cell Phone number on which he may be contacted at

any time and shall also ensure that the said number is kept active and switched on at all times;

- iv. The Petitioner shall drop a google pin location from his Mobile Phone to the SHO concerned, so as to show his whereabouts, every day;
- v. The Petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any; and
- vi. The Petitioner or his family members/ relatives/ friends will not contact or try to influence/ intimidate any of the Prosecution witnesses or tamper with the Prosecution evidence in any manner whatsoever;

21. It is made clear that nothing stated hereinabove shall tantamount to an expression of opinion with regard to the merits of the case and that all the observations made or findings recorded hereinabove shall be restricted to the disposal of the present Bail Application only.

22. Bail Application is, thus, **disposed** of, along with pending application(s), if any.

23. Registry to send a copy of this Judgment to the Trial Court for information and compliance.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

April 29th, 2026

"TAHIR"

- i. Whether the Judgment is approved for reporting?

Yes.