

S. No. 05
Regular Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App/17/2026

KAMRAN MUSHTAQ LONE THROUGH ...Appellant/Petitioner(s)
HIS FATHER

Through: Mr. Aswad R. Attar, Advocate

Vs.

UNION TERRITORY OF J&K THROUGH ...Respondent(s)
S.H.O. P/S PARIMPORA

Through: Mr. Haaris Khan, Assisting Counsel vice
Mr. Mohsin Qadiri, Sr. AAG

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER

22.05.2026

- 1.** The petitioner is facing trial in FIR No. 10/2024 registered under Sections 8/21 and 27-A of the NDPS Act. Initially, he had approached the Court of Second Additional Sessions Judge, Srinagar "the trial court" seeking bail, while co-accused were granted bail, the petitioner was denied the same on the ground that he was alleged to be involved in an offence punishable under Section 27-A of the NDPS Act. After the filing of the charge-sheet and framing of charges on 28.03.2024, the petitioner filed another application for bail, which was allowed, and he was granted short-term bail vide order dated 26.04.2024. Thereafter, by order dated 14.05.2024, the petitioner was admitted to regular bail.
- 2.** Subsequently, the respondent-prosecution moved an application seeking cancellation of the bail granted to the petitioner and also sought alteration of the charge on the ground that the offence under Section 27-A of the NDPS Act was attracted and, therefore, the petitioner was not entitled to the concession of bail. Acting upon the said application, the Trial Court, vide order dated 03.07.2024, recalled and cancelled the bail earlier granted to the petitioner. Aggrieved by the said order, the petitioner has challenged the same through the present petition, contending that a bare perusal of the charge-sheet does not disclose the commission of any offence under Section 27-A

of the NDPS Act, as the essential ingredients of the said provision are completely absent from the material collected during investigation. According to the petitioner, the Trial Court had consciously granted him regular bail on 14.05.2024 after considering the material available on record, and thereafter no change in circumstances or supervening event occurred that could justify cancellation of the bail so granted. The petitioner asserts that the respondents misled the Court by invoking Section 27-A of the NDPS Act, although the allegations and evidence on record did not, even prima facie, make out an offence under the said provision.

3. The petitioner further contends that he was never in conscious possession of any contraband substance and that the prosecution has falsely implicated him by concocting a fabricated narrative. It is submitted that since the alleged recovery itself is disputed and forms a matter for trial, the same could not have been relied upon to deny or cancel the concession of bail. The petitioner also emphasizes that he has no previous criminal antecedents or involvement in similar offences and has throughout remained cooperative with the investigating agency as well as the trial proceedings. Accordingly, it is urged that the impugned order cancelling bail is unsustainable in law and deserves to be set aside.
4. Ld. counsel for the petitioner, while placing reliance upon the judgment of the Hon'ble Supreme Court in ***State of West Bengal v. Rakesh Singh, (2022) 19 SCC 306***, submitted that the quantity of contraband allegedly recovered, was only of intermediate quantity and that even if the quantities recovered from all the accused persons were taken cumulatively, the same would still not constitute a commercial quantity. It was contended that the rigours of Section 37 of the NDPS Act were, therefore, not attracted. Ld. counsel further argued that there was no material on record to indicate that the petitioner had indulged in financing illicit traffic or harbouring offenders so as to attract the provisions of Section 27-A of the NDPS Act. According to him, the invocation of Section 27-A was wholly unwarranted and was resorted to only with a view to defeat the petitioner's claim for bail.
5. The respondents have opposed the petition and submitted that on 30.01.2024, a police party laid a naka at Maloora near J&K Bank and

intercepted a vehicle bearing Registration No. HR05BK-1149 which was proceeding from Maloora Bus Stand. During the search of the vehicle, certain incriminating articles, including a digital weighing scale, a broken sponge and a syringe, were recovered out of the three occupants but there wasn't any recovery from petitioner.

6. It is further stated that, intermediate quantity of contraband was recovered from the other two accused persons. After the petitioner and the co-accused were formally arrested, the seized substance was subjected to the prescribed sampling procedure and sent for forensic examination. The report received from the Forensic Science Laboratory confirmed that the seized substance was Diacetyl Morphine (Heroin), a notified narcotic drug, thereby attracting the provisions of Sections 8 and 21 of the NDPS Act.
7. According to the respondents, the investigation revealed that co-accused Irshad Ahmad Mir was a drug addict who had arranged money for the purchase of narcotic substances by selling gold ornaments belonging to his wife at a jewellery shop situated on Hari Singh High Street. It is alleged that a portion of the sale proceeds was utilized for purchasing another ornament, while the remaining amount was used for procuring heroin from the petitioner, namely Kamran Mushtaq. The respondents assert that this fact stands corroborated by the statements of witnesses as well as documentary evidence collected during the course of investigation. The medical records collected during investigation revealed that co-accused Irshad Ahmad Mir was undergoing treatment for drug abuse and substance use disorder. The prosecution further alleged that the petitioner was engaged in the illicit trade of narcotic substances and was supplying heroin to various drug addicts in exchange for monetary consideration. Upon scrutiny of the petitioner's bank accounts, several suspicious transactions were detected, and the total amount traced through such transactions exceeded Rs. 2,14,150/-, which, according to the investigating agency, constituted proceeds derived from illicit narcotic drug trafficking.
8. It is the case of the respondents that the petitioner had been consistently facilitating and supporting such unlawful activities and that, when these facts were brought to the notice of the Trial Court, it

found sufficient grounds to withdraw the concession of bail earlier granted to him.

- 9.** It is on the aforesaid grounds that the respondents maintain that the order passed by the Trial Court withdrawing the concession of bail does not suffer from any legal infirmity and warrants no interference.
- 10.** Ld. counsel for the petitioner, however, contended that, prima facie, no offence under Section 27-A of the NDPS Act is made out against him. It was argued that while granting bail to the petitioner vide order dated 14.05.2024, the Trial Court had duly considered the entire prosecution case, including the allegations pertaining to Section 27-A, and had consciously exercised its discretion in favour of the petitioner. According to learned counsel, from the date of grant of bail till the passing of the impugned order dated 03.07.2024, no material surfaced to indicate that the petitioner had misused the concession of bail or indulged in any activity warranting its cancellation. It was, therefore, submitted that once judicial discretion had been exercised in granting bail, the same could be withdrawn only on the well-settled parameters governing cancellation of bail.
- 11.** Per contra, ld. counsel for the respondents argued that initially charges under Sections 8/21 and 29 of the NDPS Act alone had been framed, but subsequently Section 27-A was added. It was argued that once an offence under Section 27-A stood attracted, the rigours of Section 37 of the NDPS Act became applicable, and the Trial Court was fully justified in recalling the concession of bail and directing the petitioner to be taken into custody.
- 12.** Heard both counsels and have examined the record. The controversy in the present petition essentially revolves around the legality of the order dated 03.07.2024 whereby the Trial Court recalled and cancelled the bail earlier granted to the petitioner vide order dated 14.05.2024.
- 13.** It is not in dispute that the prosecution case from the very inception was that, while recoveries of 4.55 grams and 3 grams of heroin were effected from the possession of co-accused Irshad Ahmad Mir and Imran Mir respectively, no contraband was recovered from the possession of the petitioner. It is equally undisputed that during the course of investigation the offence under Section 29 of the NDPS Act

was found not to be attracted and was accordingly dropped. The prosecution, however, consistently maintained that the petitioner was liable to be prosecuted under Section 27-A of the NDPS Act on the allegation that he was involved in financing illicit traffic of narcotic drugs. The record further reveals that the petitioner was subsequently granted short-term bail on account of the marriage of his sister and thereafter, upon consideration of his regular bail application, the learned Trial Court, by order dated 14.05.2024, enlarged him on bail. While doing so, the Court was conscious of the prosecution allegations, including the assertion regarding applicability of Section 27-A of the NDPS Act. The Court observed that the quantity of contraband recovered in the case was not commercial in nature and, therefore, proceeded to exercise its discretion in favour of the petitioner by granting him the concession of bail.

14. Shortly thereafter, the prosecution moved an application seeking cancellation of the bail granted to the petitioner. The principal ground urged was that the charge-sheet disclosed commission of an offence punishable under Section 27-A of the NDPS Act and, consequently, the rigours of Section 37 of the Act stood attracted. Accepting the said contention, the learned Trial Court recalled its earlier order and cancelled the bail granted to the petitioner on the premise that once Section 27-A was attracted, the statutory restrictions contained in Section 37 operated as a bar to grant of bail.

15. The question that, therefore, falls for consideration is whether the Trial Court was justified in recalling its earlier order granting bail in the absence of any supervening circumstance or misuse of the concession of bail by the petitioner. It is a settled principle of law that rejection of bail and cancellation of bail stand on different footings. While bail may be refused on a consideration of the material available at the initial stage, cancellation of bail already granted requires the existence of cogent and overwhelming circumstances such as misuse of liberty, interference with the course of justice, tampering with evidence, intimidation of witnesses, likelihood of absconding, or other supervening events rendering the continuance of bail prejudicial to a fair trial. The Hon'ble Supreme Court in *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349, held that very cogent and overwhelming

circumstances are necessary for an order directing cancellation of bail already granted. The same principle has been reiterated in *X v. State of Telangana*, (2018) 16 SCC 511.

- 16.** In the present case, the record does not disclose that after grant of bail on 14.05.2024, the petitioner either violated any condition of bail, attempted to influence witnesses, tampered with evidence, absconded from the process of law, or otherwise misused the liberty granted to him. Significantly, the application seeking cancellation of bail was not founded upon any subsequent conduct of the petitioner but was predicated entirely upon the assertion that the Trial Court had committed an error while granting bail in the first instance. Such a ground, by itself, would not ordinarily justify cancellation of bail once judicial discretion has already been exercised and the order granting bail has attained finality.
- 17.** The prosecution, however, seeks to justify the invocation of Section 27-A of the NDPS Act by relying upon the financial transactions reflected in the petitioner's bank account, statements of certain witnesses, and the allegation that co-accused Irshad Ahmad Mir had purchased heroin from the petitioner out of money generated through sale of gold ornaments. The status report further refers to suspicious transactions aggregating to approximately ₹2,14,150/- and alleges that the petitioner was engaged in illicit trafficking of narcotic substances. The prosecution also relies upon the statement of PW-12 Shayan, who is stated to be undergoing treatment for drug addiction and who claims that the petitioner had been supplying narcotic substances to him over a considerable period of time.
- 18.** The scope and ambit of Section 27-A of the NDPS Act came up for consideration before the Hon'ble Supreme Court in *State of West Bengal v. Rakesh Singh*, (2022) 19 SCC 306. The Court observed that the expression "financing illicit traffic" occurring in Section 27-A carries a specific connotation and cannot be invoked merely on the basis of every transaction involving money. There must exist material indicating direct or indirect financing of activities constituting illicit trafficking as contemplated under the Act. Mere allegations unsupported by material demonstrating a nexus between the financial transactions and financing of narcotic activities may not be sufficient

to attract the rigours of Section 27-A. Which position of law has been followed by a co-ordinate bench of this court in *Mohd. Aslam Vs. UT of J&K* (CRM(M) No. 157/2025 c/w Bail App No. 297/2024)

- 19.** Examined in the light of the aforesaid principle, it emerges from the material placed on record that no contraband was recovered from the possession of the petitioner. The prosecution case primarily rests upon witness statements, bank transactions and allegations that certain amounts were transferred to the petitioner's account by persons who allegedly purchased narcotic substances from him. At this stage, the Court is not required to record any conclusive finding regarding the guilt or innocence of the petitioner. Nevertheless, it cannot be overlooked that the concept of "financing illicit traffic" contemplated under Section 27-A is distinct from merely receiving consideration for the sale of narcotic substances. Financing ordinarily connotes the provision, investment or channelisation of funds or resources for facilitating illicit trafficking activities. The mere receipt of money, absent further material indicating that such funds were utilised for financing or facilitating illicit trafficking, may not, by itself, satisfy the statutory requirements of Section 27-A.
- 20.** The material presently relied upon by the prosecution undoubtedly raises issues that would require adjudication during trial. However, the crucial aspect remains that the allegations concerning bank transactions, witness statements and the purported applicability of Section 27-A were already available when the Trial Court granted bail to the petitioner on 14.05.2024. No fresh material appears to have surfaced thereafter which could constitute a supervening circumstance warranting cancellation of bail. In such circumstances, the subsequent order recalling the earlier bail order effectively amounts to a review of the merits of the grant of bail rather than a cancellation founded upon legally recognised grounds. Since criminal courts do not possess the power to review their own judicial orders except where specifically authorised by statute, the exercise undertaken by the Trial Court requires careful scrutiny in light of the settled principles governing cancellation of bail.
- 21.** Therefore, while the allegations levelled against the petitioner are undoubtedly serious and the prosecution is at liberty to establish the

same during trial, the determinative issue in the present proceedings is not the ultimate culpability of the petitioner but whether the conditions necessary for cancellation of bail were satisfied. In the absence of any allegation or material indicating misuse of liberty, violation of bail conditions, interference with the course of justice or any other supervening circumstance arising after the grant of bail, the impugned order recalling the concession of bail appears to be contrary to the settled principles laid down by the Hon'ble Supreme Court in *Dolat Ram v. State of Haryana supra*.

22. For the foregoing reasons, the order impugned dated 03.07.2024, being contrary to the settled principles of law, is set-aside and the petitioner is directed to be admitted to bail subject to furnishing of personal bond and surety for an amount of Rs. One Lac, to the satisfaction of the Trial Court on the following conditions: -

- i. The petitioner shall appear before the Trial Court on each and every date of hearing unless exempted by the Court concerned.
- ii. The petitioner shall not directly or indirectly influence, threaten or induce any prosecution witness.
- iii. The petitioner shall not leave the territorial jurisdiction of the Union Territory of Jammu and Kashmir without prior permission of the Trial Court.
- iv. In case the petitioner indulges in any act prejudicial to the fair conduct of the trial, the prosecution shall be at liberty to seek cancellation of bail.

23. Disposed of along with connected applications, if any. Nothing stated hereinabove shall prejudice the parties in trial and shall be seen in the context of granting of bail only.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
22.05.2026
Shabroz

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