



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail Application No. 146/2023

Pronounced on: 06.06.2025

Muneer Ahmad Khan

...Appellant/Petitioner(s)

Through: Mr. Arzaan Ahmad Dar, Advocate.

Vs.

Union Territory of J&K & Ors.

...Respondent(s)

Through: Mr. Satinder Singh Kalla, AAG.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Heard learned counsel for both the sides.
2. Perused the pleadings as well as scanned record of the criminal case summoned from the court below.
3. The petitioner has approached this Court with a petition under section 439 of Code of Criminal Procedure, 1973 invoking the jurisdiction of this Court in the matter of grant of bail in a criminal case in which the petitioner is one of accused persons.



4. The petitioner has suffered rejection of his bail plea from the trial court of learned Principal Sessions Judge, Kupwara, which, vide an order dated 27.06.2023, came to reject not only the bail application of the petitioner but also that of other three co-accused by said common order dated 27.06.2023.

5. On 11.07.2022 the Police of Police Station, Tregam is said to have set up 'Naka-check' at Chaeshma, Tregam. At said 'Naka-check' a motorcyclist riding a motor cycle bearing registration No.PB10EX-4382 on its way from Kupwara to Kralpora when signaled to halt is alleged to have tried to escape only to be got caught alongwith pillion rider by the Naka Party. The motorcyclist came to be identified as Asif Bashir upon whose personal search Brown-Sugar narcotic (8-10 grams) is alleged to have been recovered, whereas the pillion rider identified as Mehtab Ahmad Malik was found to be possessing or carrying no such contraband.

6. This incident resulted in registration of an FIR No. 38 of 2022 dated 11.07.2022 for commission of offence under sections 8(a)/21 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.



7. The investigation of said FIR No. 38 of 2022 proceeded purportedly on the inputs of Asif Bashir, the prime accused arrested on 11.07.2022 which led to an alleged disclosure that the alleged contraband item was purchased by him (Asif Bashir) from the petitioner-Muneer Ahmad Khan. Consequently, the arrest of the petitioner came to take place on 24.07.2022 and ever since then the petitioner came to be in continuing custody, firstly during the investigation and later on post commencement of the trial of the criminal case.

8. The arrest and interrogation of the petitioner is said to have led to an alleged disclosure by the petitioner that he had got an alleged contraband item from one Idress Ahmad Khan on a deal of ₹40,000/- against which ₹30,000/- stood paid. However, no alleged contraband item was recovered from the petitioner.

9. Idress Ahmad Khan came to be arrested as an accused No.3 on 31.07.2022 and from him an alleged recovery of 2 grams of brown sugar is said to have taken place.

10. Acting upon Idrees Ahmad Khan's interrogative inputs, one Tahir Ahmad Sofi came to be arrested on 04.08.2022 as an accused No.4 found with alleged



possession of 5 grams of brown sugar and cash of ₹63,910/-.

11. This aforesaid sequence of events attended with the investigation by the Police Station, Tregam resulted in preparation and presentation of a Final Police Report (Challan) No. 32 dated 10.11.2022 booking four above named accused persons for alleged commission of offences under sections 8/21, 29, 27-A of NDPS Act, 1985 to undergo trial before the court of Principal Sessions Judge, Kupwara on 29.11.2022.

12. During the course of investigation of FIR No.38 of 2022 itself, all the four accused persons had come forward with four individual bail applications/petitions filed before the court of learned Principal Sessions Judge, Kupwara for seeking bail by reference to their arrest in FIR No.38 of 2022.

13. The petitioner came to file his bail petition on file No.48-M on 27.07.2022. The prime accused-Asif Bashir Wani had filed his bail petition earlier to the bail petition filed by the petitioner-Muneer Ahmad Khan, whereas two other accused persons namely Mohammad Idress Khan and Tahir Ahmad Sofi came to file their respective bail petitions later.



14. During the pendency of the said four bail petitions, a Final Police Report (Challan) No.32 of 2022 had come to be presented before the court of learned Principal Sessions Judge, Kupwara and, as such, the adjudication of the said four bail petitions by the court of learned Principal Sessions Judge, Kupwara came to take place in light of the facts and circumstances as cited by the Police Station, Tregam in its Final Police Report (Challan) No.32 of 2022 whereby four accused were presented to stand trial.

15. By virtue of a common order dated 27.06.2022, all the four bail petitions came to be rejected by the court of learned Principal Sessions Judge, Kupwara constraining the petitioner to petition this Court for earning bail.

16. The petitioner in his present bail petition has come up pleading that his continuing custody as an undertrial is antithesis to the law of bail in the sense that without any culpability attending him he has come to be implicated in the case just by a mere alleged interrogative and confessional statement of the prime accused Asif Bashir the alleged motorcyclist from whose alleged possession the contraband in the form of Brown Sugar came to be recovered and thereafter the Police came up with an alleged linkage of Asif Bashir with the petitioner



and from the petitioner to co-accused Idrees Ahmad Khan and from Idrees Ahmad Khan to co-accused Tahir Ahmad Sofi.

17. The court of learned Principal Sessions Judge, Kupwara, while denying bail to the petitioner as well as to the other three accused persons, has drawn the common order dated 27.06.2023 without adverting individual wise case study for the purpose of evaluation as to whether the prosecution case against all the accused persons is painted with same color and brush or with different color and brush, and this is where this court finds that the court of learned Principal Sessions Judge, Kupwara fell in error of approach and adjudication. A trial court dealing with bunch of bail applications in a given criminal case is well-advised to deal with and decide bail applications by individual orders rather than by a common order.

18. Going by the understanding of the court of learned Principal Sessions Judge, Kupwara, it is worth observing its premise that if the prime accused Asif Bashir comes to be found guilty on the basis of the evidence led in the case, then all the three co-accused persons/undertrials per- force are also to be adjudged guilty. Said premise cannot be a principle on which an adjudication of a



criminal case involving number of accused persons is undertaken particularly when section 34 IPC is not in play.

19. Role of each and every accused person is brought under a scanner by reference to the prosecution evidence read with evidence in defense, if any, and then a judgment is exercised by the trial court as to whether accusations by the prosecution against accused persons fasten culpability upon all the accused persons or only one or some of them in the context of the offences charged against them individually.

20. In dealing with the matter of consideration of bail application of accused person under the regime of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, there is an operating mandate in section 37 of the said Act as to how exercise of discretion is supposed to take place in the matter of granting of bail to an accused/undertrial person booked for a commission of offence under the provisions of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

21. A court dealing with a bail application under Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, has to stay ever cautious that even for the sake of



formulating an adjudicatory discretion to hold that there is a reasonable ground for believing that bail seeking accused is not guilty of the offence booked under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, so as to entitle him/her to earn bail, the court cannot afford to over stretch itself by diving and delving deep to the extent of making a forensic like appreciation and appraisal of evidence on record as that would be nothing but an advance ruling by a given trial court on a very sustainability and survivability of the prosecution case qua an accused.

22. The Hon'ble Supreme Court of India came to deal with the import and intendment of the mandate of section 37 meant for a court in dealing with matter of granting or refusing bail to an accused by reference to satisfaction that the accused is not guilty and would not commit any offence.

23. In the case of **“Mohd. Muslim alias Hussain Vs State (NCT of Delhi),”AIR 2023 SC 1648**, the Hon'ble Supreme Court of India in paragraphs 18 & 19 came forward drawing correct understanding of the aspect thereby facilitating it for the criminal courts in the



application of section 37 of the NDPS Act, 1985. Said two paragraphs 18 & 19 are reproduced herein under:-

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably.

Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is



reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

24. Thus, what is actually intended and meant by reasonable grounds for believing that an accused is not guilty of such an offence for the purpose of consideration of bail application is an insightful reading and understanding of the evidentiary material whatsoever available on record at the given stage of the case when plea of bail is getting considered, enabling a drawing of an inference but not a conclusion that the final trial of an accused may possibly result as against is likely to result in his/her non-conviction. Therefore, at the given point of time when an accused has come to seek bail, he/she can be safely restored to liberty and release from the jail on bail but surely not meaning to serve and deliver an assurance to such an accused that since he/she has earned bail from the trial court operating on a belief that there are grounds for believing that he/she is not guilty, therefore, his or her acquittal is now just a matter of ‘waiting’ to take place.

25. The petitioner in his bail petition has sought the bail on the basis of grounds as set up in paras 5(A) to (B)



urging the point that he has been implicated in the case without any evidentiary basis and is being subjected to trial which is going to fail against him in the final analysis.

26. The respondent – UT of J&K through SHO Police Station Trehgam, Kupwara in its objection has resisted the bail petition on the standard tone and tenor by highlighting the drug menace in the UT of J&K in particular Kashmir which calls for stringent application of law even in the matter of grant of bail against the accused.

27. The narrative of the prosecution case is that upon arrest of prime accused Asif Bashir it was disclosed by him that he had made the alleged purchase of contraband item Brown Sugar 8 grams from the petitioner which confirmed commission of offence under sections 8/21, 29 of NDPS Act, 1985 against the petitioner along with prime accused Asif Bashir. It is the Prosecution's case that from the examination of the bank account details of prime accused – Asif Bashir, the involvement of co-accused Tahir Ahmad Sofi was, allegedly made out and from whom recovery of 5 grams Brown Sugar like substance and a cash of ₹63,910/- was allegedly effected from his house. Likewise upon the alleged disclosure of the petitioner, purchase of Brown Sugar was referred from co-



accused Idrees Ahmad Khan who upon his arrest is alleged to have disclosed that he had made a deal of ₹40,000/- with the petitioner out of which had received ₹30,000/- and was found to be in possession of 2 grams of Brown Sugar. It is by this narrative that commission of offences under sections 8/21, 29, 27-A of NDPS Act, 1985 came to be set up by reference to all four accused.

28. Now, in the present case when this Court undertakes said exercise of fetching the reasonable grounds for belief that the accused-petitioner, as one of the four accused, is or is not guilty of alleged offence, it is to be kept in perspective that the accusations originated from the alleged fact that accused No.1-Asif Bashir was intercepted while driving motorcycle and upon his alleged personal search found to be allegedly carrying contraband of Brown Sugar (Heroin) of given weightage which surely is not of a commercial quantity but an intermediate quantity.

29. This particular episode in itself would have entitled even accused No.1-Asif Bashir to bail in the routine course of events in case if the accused No.1-Asif Bashir would have been solely booked and put up for trial for commission of offence under section 21(b) of the NDPS



Act, 1985 but since a networking came to be set up by the Investigation Officer to hook and book the petitioner, as being the person from whom the prime accused Asif Bashir allegedly claimed to have made procurement of the said contraband item and then from the petitioner to Idrees Ahmad Khan and lastly to Tahir Ahmad Sofi, as such, the invoking of section 29 read with section 27-A of the NDPS Act, 1985 came to be put to exploit by the Investigating Officer by presentation of final police report (challan) in that shape and show, as such the rigor in earning bail by the petitioner got pitted against him right from the very inception and the court below fell so to speak in the trap by not evaluating individual wise examination and evaluation of the facts and circumstances of the case drawn from the Police report/Challan and the evidence whatsoever then available on record qua all the four accused persons.

30. Registration of the FIR in the case makes a very curious reading which is a pointer to the fact that the real genesis of the case perhaps is not the one as came to be referred in the FIR in booking the accused No.1-Asif Bashir at first instance.



31. The alleged incident which formed basis for booking of the accused No.1-Asif Bashir in the FIR is that said accused No.1- Asif Bashir was found to be carrying the alleged contraband narcotic and that meant he was found to be in commission of offence under section 8(c) of the NDPS Act, 1985 but in the FIR it is not by reference to section 8(c) that the registration of offence against said Asif Bashir came to be mentioned but instead it is by mention of section 8(a) of the NDPS Act, 1985 read with its section 21 that the registration of FIR came to take place.

32. Section 8(a) of the NDPS Act, 1985 is that '*no person shall cultivate any coca plant or gather any portion of coca plant.*' By no stretch of imagination, the alleged mention of offence can relate to the alleged act of omission or commission on the part of accused No.1-Asif Bashir being found in alleged possession of 8-10 grams of Brown Sugar upon being intercepted by the Naka party.

33. This *ex-facie* inherent contradiction in the mention of the offence in the FIR itself may serve to be a pointer as to whether the Police came up with true version of facts in the matter of registration of the FIR or it is upon an adulterated version that the FIR came to be registered which adulteration of facts continued in booking the



petitioner followed by two other accused persons by reference to the alleged involvement of prime accused No.1- Asif Bashir.

34. One salient aspect of this case is the quantity of alleged contraband item which is admittedly of intermediate scale and by that reference diffuses the stringency envisaged under section 37 of the NDPS Act, 1985 as held by the Hon'ble Supreme Court of India in its case **"Sami Ullaha Vs Superintendent, Narcotic Central Bureau" (2008) 16 SCC 471.**

35. Another salient aspect of the present case is that the alleged involvement of the petitioner and his implication in the criminal case has emanated from the alleged confessional statement of the prime accused Asif Bashir which invites the application of mandate of the judgment of the Hon'ble Supreme Court of India in the case of **"Tofan Singh Vs State of Tamil Nadu" (2021) 4 SCC 1.**

36. The facts of the present case are more or less identically placed with the facts of the case in the **"State of West Bengal Vs Rakesh Singh" 2022(10) Scale 483.** Said case before the Hon'ble Supreme Court of India had arisen out of bail granted by the Division Bench of the High Court of Calcutta in the case of **"Rakesh Singh Vs**

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which grant of bail was assailed by the State of West Bengal before the Hon’ble Supreme Court of India but the grant of bail was upheld in favour of the accused.

37. Bearing in mind the aforesaid facts and circumstances of the case, this Court is also inclined to allow the present bail petition seeking bail. The petitioner is hereby granted bail subject to furnishing of two bail bonds, personal as well as surety, to an amount of Rs. 5 lac each subject to such other terms and conditions as may be settled by the trial court of learned Principal Sessions Judge, Kupwara within a period of seven days from the date of receipt of the certified copy of this judgment.

38. One of the conditions to be incorporated by the court of learned Principal Sessions Judge, Kupwara in its order setting terms and conditions of bail to be that in case the petitioner is found involved/implicated in a fresh case involving commission of offences under NDPS Act, 1985, then the Prosecution shall be entitled to seek cancellation of bail against the petitioner hereby granted.

39. ***Disposed of.***



40. Copy of this judgment be forwarded by the Registrar Judicial, Srinagar to the court of Principal Sessions Judge, Kupwara for notice and compliance.

**(RAHUL BHARTI)
JUDGE**

Srinagar
06.06.2025
Muneesh

Whether the Judgment is reportable: **Yes**

