

**(2021) 05 J&K CK 0019**  
**In the Jammu And Kashmir High Court**  
**Case No : Bail Application No. 23 Of 2021**

Tawkeer Ahmad Hajam

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

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**Date of Decision :** 19-05-2021

**Acts Referred:**

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20, 27, 29, 37

**Citation :** (2021) 05 J&K CK 0019

**Hon'ble Judges :** Rajnesh Oswal, J

**Bench :** Single Bench

**Advocate :** Musavir Mir, Hakim Aman Ali

**Final Decision :** Dismissed

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## Judgement

1. The petitioner has filed the present bail application for grant of bail in a challan pending before the Court of Learned Sessions Judge Bandipora, arising out of FIR bearing No. 10/2018 of Police Station, Sumbal, Bandipora on the ground that the petitioner is innocent and statutory provisions of NDPS Act have not been complied with by the Investigating Officer during investigation.
2. It is further stated in the bail application that in some remand orders the petitioner is stated to have been arrested on 23.12.2017 whereas in another remand order, the date of arrest has been shown as 10.01.2018 and simultaneously, it is also pleaded that the section 29 of the NDPS Act has no application in the case of the petitioner. Further the petitioner has been in custody for the last more than three years irrespective of the fact that the petitioner is innocent and the petitioner is not remotely connected with commission of offence.
3. Response stands filed by the respondent in which besides stating the factual

aspects of the case, it has been stated that the applicant/petitioner is involved in an illegal trade in an organized manner which is great threat to the society and the volume of the contraband recovered from the petitioner does not entitle the petitioner to be enlarged on bail in view of the strict bail provisions as contained in the NDPS Act.

4. Mr. Musavir Mir, learned counsel for the petitioner has vehemently argued that the petitioner is entitled to bail as the contraband allegedly recovered from the petitioner is only 550 grams and, as such, rigors of section 27 of the NDPS Act are not applicable. He further submits that there is no evidence against the petitioner/applicant that necessitates the framing of the charge under section 29 of the NDPS Act. He further submitted that the petitioner has been in custody for the last more than three years and, as such, he deserves to be enlarged on bail.

5. Per contra, Mr. Hakim Aman Ali, learned counsel appearing for the respondent has vehemently argued that the petitioner has been charged for commission of offences under sections 8, 20 and 29 of the NDPS Act and as such, rigors of section 37 of the NDPS Act will apply in the instant case and the recovery made from the petitioner cannot be considered in isolation vis a vis recovery made from the other accused.

6. Heard and perused the record.

7. The brief facts which are necessary for disposal of the present application as projected by the respondent are that on 10.01.2018, Police Station,

Sumbal received a written docket from SHO Police Station through SPO Imtiyaz Ahmad stating therein the SHO along with escort party Sgct Mohd.

Rafiq, Ct. Sajad Hussain, SPO Qaiser Ahmad, SPO Imtiyaz Ahmad, SPO Khurshid Ahmad, SPO Nazir Ahmad were on patrolling duty and a naka

was established at Shilvath main road near Ziyarat Baba Jungi. During naka checking, two persons carrying bags in their hands were coming from

village Shilvath towards main road. The moment these two persons reached close to naka party, both of them moved back and tried to flee from spot.

They were chased and apprehended along with their bags which they were carrying and on their search, charas like substance in the form of cakes

was recovered from their possession and during questioning they disclosed their names as Tauqeer Ahmad Hajan S/o Shamus Ud Din and about 550

gms charas like substance in the form of 04 cakes was recovered from his

possession and the another accused revealed his name as Jameel Ahmad

Hajan S/o Mohd Ashraf Hajam and from his possession, 1 Kg 900 grams charas like substance was recovered in form of 10 cakes. On receipt of

docket, FIR bearing No. 10/2018 for commission of offences under sections 8, 20 and 29 of the NDPS Act was registered and after conclusion of the

investigation, challan was present before the court of Principal Sessions Judge, Bandipora and charges for commission of offences under sections 8,

20 and 29 of the NDPS Act were framed against the petitioner as well as other co-accused. The FSL report also confirmed that the contraband so

recovered from the petitioner and the co-accused was charas.

8. The learned trial court has rejected the bail application on the ground that the material witnesses are yet to be examined and the quantity recovered

from the accused falls within the category of commercial quantity. It is evident from the record that the charges for commission of offences under

section 8, 20 and 29 of the NDPS Act have been framed against the petitioner as well as against other co-accused and the prosecution is leading

evidence. As the petitioner along with other co-accused have been charged for commission of offence under section 29 of the NDPS Act so the

individual recovery made from the petitioner is of no consequence and the recovery from both the accused is to be taken together for the purpose of

determining as to whether the alleged contraband falls within the category of commercial quantity or not. Needless to say that sec 29 of NDPS Act

makes the conspiracy to commit an offence under the NDPS Act, punishable as well.

9. From the perusal of the record, it is evident that 550 grams of charas was recovered from the applicant and 1 Kg 900 grams of charas was recovered

from other co-accused. Both these recoveries together fall within the category of commercial quantity so far as the petitioner is concerned and the

contention of the learned counsel for the petitioner that 550 grams recovered from the petitioner is intermediate quantity, is of no consequence

particularly in view of the framing of charge for commission of offence under section 29 of the NDPS Act. More so, the rigors of section 37 of the

NDPS Act are applicable in the instant case and at this stage, this Court is not in a position to determine that the accused is not guilty of commission

of offence for which he has been charged and further that he will not indulge in

similar type of offences if released on bail. Reliance is placed upon the decision of Apex Court in case titled “Superintendent, Narcotics Control Bureau versus R. Paulsamy” reported in 2000AIR 3661(SC), the relevant paragraph 6 is reproduced as under:

6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the Public Prosecutor unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by the learned Single Judge at the stage of consideration for bail. The minimum which learned Single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned Single Judge during bail stage regarding the compliance with the formalities mentioned in those two sections.

10. So far as other contention of the petitioner is concerned that the statutory requirements have not complied with by the Investigating Officer, cannot be appreciated at this stage, particularly when the prosecution is leading evidence before the trial court.

11. For all what has been discussed above, this bail application has not merit and is dismissed.