

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

*Reserved on: 23.04.2026*

*Pronounced on: 30.04.2026*

*Uploaded on: 30.04.2026*

*Whether the operative part or full  
judgment is pronounced: **Full***

CrlM No.1833/2026  
In CrlA(S) No.19/2025

BASHIR AHMAD BHAT

...APPLICANT/APPELLANT(S)

Through: - Mr. N. A. Ronga, Advocate.

Vs.

UT OF J&K

...DEFENDANT(S)

Through: - Mr. Ilyas Laway, GA.

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**ORDER**

1. By this order, application of the applicant/appellant for suspension of sentence and grant of bail in a case arising out of FIR No.230/2021 for offences under Section 8/15 NDPS Act, is proposed to be disposed of.

2. The applicant/appellant has been convicted of offence under Section 8/15(c) of the NDPS Act for possession of commercial quantity of Poppy Straw, in terms of judgment dated 25.10.2025 recorded by the learned Special Judge (Designated under NDPS Act), Anantnag (hereinafter referred

to as “the Special Judge”). Vide order dated 27.10.2025 passed by the learned Special Judge, the applicant/appellant has been sentenced to undergo rigorous imprisonment for a period of ten years and a fine of Rs.1.00 lakh) (rupees one lakh). In default of payment of fine, the appellant has been directed to undergo rigorous imprisonment for a further period of one year.

3. By virtue of the accompanying appeal, the appellant has laid challenge to the impugned judgment of conviction and order of sentence on several grounds. The applicant/appellant has sought suspension of sentence imposed upon him by the trial court and has also prayed for grant of bail pending consideration of the appeal.

4. As per the prosecution case, which has been found established against the appellant in terms of the judgment under challenge in the accompanying appeal, on 19.08.2021, the police, while on routine patrolling at Dhonipora adjacent to National Highway crossing, Anantnag, intercepted a vehicle (Alto 800) bearing registration No.JK18A-1097, that was proceeding from Anantnag towards Sangam. During search of the vehicle, the police party recovered five Nylon bags concealed inside the vehicle containing a total of 70 kgs of Poppy Straw. The appellant was found to be incharge of the

vehicle at the relevant time. After full dressed trial of the case, charges against the appellant were found established and he was convicted of offences under Section 8/15(c) of NDPS Act in terms of judgment dated 25.10.2025 passed by the learned Special Judge, which is under challenge in the accompanying appeal.

5. In the application seeking suspension of sentence and grant of bail, it has been contended that the appellant is an innocent person and that in view of the grounds projected in the memorandum of appeal, he is surely going to succeed as he has a strong prima face in his favour. It has been contended that the appellant has already undergone more than four years of imprisonment while facing trial and that decision of appeal is going to take some time, therefore, he deserves to be enlarged on bail.

6. The application has been contested by the respondent by filing its reply, wherein it has been contended that by virtue of the impugned judgment passed by the learned Special Judge, it has been proved beyond doubt that the appellant was in possession of commercial quantity of contraband, therefore, the provisions of Section 37 of the NDPS Act are attracted to his case and unless he satisfies the strict conditions for grant of bail as laid down in the said provision, he cannot be granted

bail. It has been contended that the impugned judgment passed by the learned Special Judge is well-reasoned and the same does not admit of any interference from this Court. It has been further contended that enlarging the appellant on bail would give a wrong signal to the society at large as the menace of drug trafficking has assumed alarmed proportions.

7. I have heard learned counsel for the parties and perused the grounds of appeal, impugned judgment passed by the learned Special Judge and the trial court record.

8. It is not in dispute that the appellant has been convicted of offence under Section 8/15(c) of the NDPS Act and as per the impugned judgment passed by the learned Special Judge, he was found to be in possession of commercial quantity of contraband substance. It is also not in dispute that the appellant has remained incarcerated during trial of the case and he has spent more than four years in custody. The question that arises for determination is whether in a case where the provisions contained in Section 37 of the NDPS Act are attracted, a convict can be released on bail merely on the ground of long incarceration.

9. The aforesaid issue has been a subject matter of determination and deliberation before the Supreme Court in a number of cases. In **Union of India vs. Rattan Malik**, (2009)

2 SCC 624, the Supreme Court has held that recording of satisfaction that accused is not guilty of offence and that he is not likely to commit any offence while on bail is *sine qua non* for grant of bail under NDPS Act.

10. Again, in the case of **Rattan Kumar Vishwas vs. State of UP & Ors.** (2009) 1 SCC 482, the Supreme Court has, while considering the issue relating to suspension of sentence pending consideration of appeal against conviction for offences under Section 27A and 29 of NDPS Act, held that the person convicted of offence under NDPS Act should not be released on bail unless the mandatory conditions provided under Section 37 that there are reasonable grounds for holding that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail, are satisfied.

11. In **Preet Pal Singh vs. State of Utter Pradesh**, (2020) 8 SCC 645, the Supreme Court has, while drawing a distinction between grant of bail under Section 439 of Cr. P. C at pre-trial stage and suspension of sentence under Section 389 of the Cr.P.C, made the following observations:

*“There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an*

*exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra). However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Code of Criminal Procedure.”*

12. Relying upon the aforesaid observations, the Supreme Court has, in the case of **State of (GNCT of Delhi) Narcotics Control Bureau vs. Lokesh Chadha**, (2021) 5 SCC 724, held that where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of the Code of Criminal Procedure, must be duly cognizant of the fact that a finding of guilt has been arrived at by the trial judge at the conclusion of the trial. The Court further observed that while High Court is not deprived of its power to suspend the sentence, yet it may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPD Act.

13. Recently, the Supreme Court in the case of **State of Punjab vs. Sukhwinder Singh @ Gora** (SLP (CrI) No.5020 of 2026 decided on April 24, 2026), while setting aside the order of the High Court granting bail to an accused who had been

convicted for offences punishable under Section 21(c) and 29 of the NDPS Act, held that rigour of Section 37 of NDPS Act cannot be diluted even while bearing in mind right to speedy trial under Article 21 of the Constitution. It has been further held that in the matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1) are necessary. Paras (9) and (10) of the said judgment are relevant to the context and the same is reproduced as under:

*“9. The position of law on the grant of bail in matters involving recovery of commercial quantity of contraband under the NDPS Act is well settled. Section 37(1)(b)(ii) of the NDPS Act is cast in mandatory terms. Where the Public Prosecutor opposes the application for bail, the Court can enlarge an accused on bail only upon recording its satisfaction on two cumulative conditions: first, that there are reasonable grounds for believing that the accused is not guilty of the offence; and second, that the accused is not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a jurisdictional requirement. This Court in Kashif (supra) has held, in plain terms, that the non-recording of the twin satisfaction, being mandatory in nature, renders an order granting bail unsustainable. A similar view has been expressed in Lalrintluanga Sailo (supra) and Ajay Kumar Singh (supra).*

*10. When the impugned order is tested against that settled position, it becomes apparent that paragraph 8 of the impugned order, which carries the weight of the reasoning, does not contain a finding on either of the twin conditions prescribed by Section 37(1)(b)(ii) of the NDPS Act. What the High Court has, instead, proceeded on is the proposition that “the rigors of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial”. The right to speedy trial under Article 21 of the Constitution is undoubtedly a valuable constitutional guarantee; but in the*

*context of a special statute such as the NDPS Act dealing with commercial quantity, that right has to be read alongside, and not in displacement of, the mandate of Section 37. The omission to record the twin satisfaction prescribed by the statute, it appears, may have escaped the attention of the High Court.”*

14. From the foregoing analysis of the legal position, it is clear that while long incarceration of a convict may be a factor for considering the issue as to whether constitutional right guaranteed under Article 21 of the convict stands violated but in a case where the accused has been convicted of an offence under NDPS Act which attracts stringent conditions laid down in Section 37 of the said Act, the Court has to be satisfied that such conditions are fulfilled before enlarging the convict on bail.

15. Turning to the facts of the present case, it has been contended by learned counsel appearing for the appellant that there are inconsistencies in the statements of prosecution witnesses and that despite the alleged recovery having taken place on a highway, no civil witnesses were associated with the recovery.

16. A perusal of the statements recorded by the trial court during trial of the case would, *prima facie*, show that the police witnesses have supported the prosecution case. At this stage it may not be proper for this Court to undertake a meticulous analysis of the statements recorded during trial of the case but

for the limited purposes of deciding this application, I do not find that there are any material contradictions in the statements of prosecution witnesses that would render the impugned judgment passed by the learned Special Judge unsustainable in law on a cursory reading of the said judgment.

17. It has been further contended that safe custody of the seized contraband and sealed samples has not been proved by the prosecution in this case. In this regard, the learned Special Judge has recorded the fact that sealed samples were received by the FSL and the seals were found intact, which shows that the integrity of the samples has not been violated. Prima facie, the reasoning adopted by the learned Special Judge appears to be well founded though the same may call for a meticulous analysis at the time of final decision of the appeal.

18. It has also been contended by learned counsel for the appellant that in the instant case the investigating agency has not adhered to the provisions of Section 42 and Section 50 of the NDPS Act and this aspect has been brushed aside by the trial court. In this context, it is to be noted that from a cursory reading of the material on record including the evidence lead by the prosecution, *prima facie*, it appears that it is a case of chance recovery and not recovery based on prior information, as such, provisions of Section 42 of the NDPS Act are not

attracted to this case. Similarly, the recovery of contraband substance has been affected from the vehicle of the appellant and not from his personal search, as such, provisions of Section 50 of the NDPS Act are also not attracted to the present case.

19. From an overall reading of the impugned judgment passed by the learned Special Judge and the cursory look at the statements of the prosecution witnesses, it cannot be stated that the appellant is not guilty of the offences for which he has been convicted. Thus, the conditions stipulated in Section 37 of the NDPS Act for grant of bail to the appellant are not satisfied in the present case.

20. So far as incarceration of the appellant is concerned, it is true that he has been in custody for the last more than four years but mere fact that he has been in custody for such period would not entitle him to grant of bail unless it is shown that there is no likelihood of his appeal being taken up for hearing in near future. During the course of arguments, learned counsel for the appellant was given an option of arguing the main appeal finally but he sought time to argue the same. So, it is not a case where the main appeal, which has been filed by the appellant recently in the month of November, 2025, is not being taken up for hearing by this Court but it is a case where

learned counsel for the appellant has sought time to argue the main appeal. Therefore, merely because the appellant is in custody for the last more than four years, it cannot be stated that his constitutional right guaranteed under Article 21 stands violated, particularly when the Court was inclined to hear the main appeal itself.

21. For the foregoing reasons, I do not find any merit in this application. The same is dismissed, accordingly. The appellant is, however, given liberty to renew his prayer for suspension of sentence/grant of bail in case, for a reason not attributable to the appellant, his appeal is not heard by this Court in next six months.

22. Anything stated in this order shall not be taken as an expression of opinion on merits of the appeal.

**(Sanjay Dhar)**  
**Judge**

**SRINAGAR**

30.04.2026

“Bhat Altaf-Secretary”

Whether the **Order** is speaking: **YES**

Whether the **Order** is reportable: **YES/NO**