

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App. No.12/2026

CrIM No. 122/2026

Reserved on: 25.09.2026

Pronounced on: 05.10.2026

Uploaded on: 05.10.2026.

Operative part or full judgment: **Full**

Union Territory of J&K

Through Station House Officer
Police Station Awantipora,
District Pulwama.

...Petitioner(s)

Through: GA Jehangir Ahmad Dar with
AC Nadia Abdullah.

Vs.

Shabir Ahmad Dar

S/O Assadulla Dar
R/O Dogripora, Awantipora,
District Pulwama.

...Respondent(s)

Through: Adv. Shabir Ahmad Dar.

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

JUDGMENT

- 1.** The present application has been filed by the applicant-UT of J&K under Section 439(2) of CrPC, read with Section 482 of the Code of Criminal Procedure, 1973, seeking cancellation of the order dated **28.10.2025** passed by the learned Presiding Officer, Special NDPS Court, Pulwama, whereby the respondent-accused came to be enlarged on bail in a case registered vide **FIR No. 145/2024**, at Police Station Awantipora, for the commission of offences

punishable under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").

2. The main grievance of the applicant-UT of J&K is that the learned trial Court, while granting bail to the respondent, failed to appreciate the nature and gravity of the accusation, the quantity of the contraband allegedly recovered from the respondent and, most importantly the statutory restrictions imposed by **Section 37** of the NDPS Act in cases involving commercial quantity.

3. The facts of the case, in brief, are that, on **10.10.2024** the respondent-accused came to be apprehended and during the course of investigation over **24 kilograms of 'ganja'** was alleged to have been recovered; that the alleged recovery of 24 kilograms of 'ganja' assumes significance because the notified commercial quantity of 'ganja' is **20 kilograms**; that the contraband, allegedly recovered from the respondent was, thus, grossly commercial quantity; that the respondent remained in custody during the investigation/trial and eventually came to be enlarged on bail by the learned trial Court vide order dated **28.10.2025**; that aggrieved of the said order the applicant-UT of J&K, through the medium of present application, has approached this Court seeking its cancellation.

4. Learned counsel appearing for the applicant-UT of J&K pleads that the order dated **28.10.2025** is legally

unsustainable as the learned trial Court has not recorded the satisfaction mandated by Section 37(1)(b)(ii) of the NDPS Act; that once the alleged recovery is 24 kilograms of 'ganja', the case falls within the category of commercial quantity and, therefore, the statutory twin conditions contained in Section 37 of NDPS Act become applicable; that the power to grant bail under Section 439 CrPC, in an NDPS case is subject to the limitations contained in Section 37 of the NDPS Act; that the learned trial Court could not have granted bail merely by applying the ordinary principles governing bail under the Criminal Code.

5. Learned counsel for the respondent, ex-adversus, seeks dismissal of the present application and contends that the respondent was enlarged on bail after due consideration by the Trial Court, as he was found entitled to it and that there are no allegations of misuse of the liberty granted to him, interference with the investigation or trial, tampering with evidence or influencing witnesses; that no supervening circumstance has been brought on record warranting, cancellation of bail, rendering such a plea to be out-rightly rejected.

6. Heard the both sides, perused the material available on file and considered the matter.

7. Before examining the merits of the case, it is necessary to notice the distinction between cancellation of bail on

account of supervening circumstances and cancellation of an order granting bail because the order itself suffers from illegality, perversity or non-application of mind. In ***Puran, Shekhar & Anr. v. Rambilas & Anr.*** reported as **2001 (6) SCC 338**, the Supreme Court explained that setting aside an unjustified, illegal or perverse order granting bail is distinct from cancellation of bail on account of subsequent misconduct or supervening circumstances. The said distinction has been reiterated by the Supreme Court in ***Abdul Basit @ Raju v. Mohd. Abdul Kadir Chaudhary*** reported as **2014 (10) SCC 754**, wherein it was held that an order granting bail can be set aside/cancelled by a superior Court where it is found to be illegal or contrary to law. More recently, in ***State of Rajasthan v. Indraj Singh*** reported as **2025 INSC 341**, the Supreme Court reiterated that an application challenging the order granting bail is conceptually different from an application seeking cancellation on account of misuse of liberty. The Court held that the superior Court is empowered to critically examine the soundness of the order granting bail and that an order which is illegal, perverse or suffers from improper exercise of judicial discretion can be interfered with, even in the absence of subsequent misconduct.

8. Thus, the submission of learned counsel for the respondent that cancellation cannot be ordered in the

absence of post-bail misconduct does not, by itself, answer the challenge raised by the applicant-UT of J&K. Where the order granting bail is alleged to be contrary to a statutory mandate, the superior Court is required to examine the legality and sustainability of that order. In the present case, the alleged recovery is over **24 kilograms of 'ganja'**, whereas the notified commercial quantity of 'ganja' is **20 kilograms**. The allegation, therefore, concerns a quantity exceeding the commercial quantity threshold.

9. Section 37 of the NDPS Act begins with a non-obstante clause and imposes additional restrictions upon the grant of bail in cases involving commercial quantity. In terms of Section 37(1)(b)(ii), the Court before grant of bail to an accused, charged of recovery of commercial quantity of contraband, must be satisfied that:

- (i) there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and
- (ii) the accused is not likely to commit any offence while on bail.

10. The statute further requires that the Public Prosecutor be given an opportunity to oppose the application. The provision is, therefore, materially different from the ordinary regime of bail under the Code. Section 37 (supra) expressly makes the restrictions applicable, notwithstanding the provisions of the CrPC/BNSS. The

Supreme Court has repeatedly held that the conditions contained in Section 37 of NDPS Act, are mandatory and that the Court granting bail in a case involving commercial quantity must record satisfaction regarding the twin conditions prescribed therein. In ***State of Kerala Etc. v. Rajesh Etc.*** reported as **(2020) 12 SCC 122**, the Supreme Court reiterated that the satisfaction contemplated by Section 37 of the NDPS Act, is not a mere formality and that the Court must apply the statutory test before enlarging an accused on bail. In ***Narcotics Control Bureau v. Mohit Aggarwal*** reported as **(2022) 4 SCC 713**, the Supreme Court again emphasised that, in a case involving commercial quantity, the Court is required to consider the limitations imposed by Section 37 of NDPS Act and that the mere passage of time in custody, by itself, does not dispense with the statutory requirements.

11. Tested on the aforesaid principles, this Court has carefully gone through the impugned order dated **28.10.2025** passed by the learned trial Court. The important question which required determination by the learned trial Court was not merely whether the respondent deserved bail under the general principles governing grant of bail. Since the alleged recovery was of 24 kilograms of 'ganja', the learned trial Court was required to specifically examine whether the respondent satisfied the stringent requirements of **Section 37(1)(b)(ii) of the NDPS Act**. The

order granting bail, however, does not disclose a satisfactory consideration of the statutory twin conditions. In particular, there is no clear and legally sustainable satisfaction recorded in the impugned order, that there were reasonable grounds for believing that the respondent was not guilty of the alleged offence.

12. The expression "reasonable grounds" is considerably different from a mere '*prima facie*' consideration applicable in an ordinary bail matter. It requires substantial grounds which would justify the Court in believing that the accused may not be guilty of the alleged offence. At the stage of bail, the Court is not required to conduct a mini-trial; nevertheless, the statutory threshold under Section 37 cannot be diluted. The learned trial Court was also required to consider the second limb of Section 37, namely, whether the respondent was not likely to commit any offence while on bail. In the absence of a meaningful consideration of these statutory requirements, the exercise of discretion by the learned trial Court cannot be sustained merely by reference to the general principles governing grant of bail.

13. There is another aspect which cannot be completely lost sight of. The NDPS Act was enacted to deal with the serious problem of illicit trafficking and abuse of narcotic drugs and psychotropic substances. The statutory scheme itself reflects the legislative concern with the harmful

consequences associated with narcotic offences. In ***Union of India v. Ram Samujh, (1999) 9 SCC 429***, the Supreme Court highlighted the deleterious effect and deadly impact of narcotic drug activities upon Society and emphasised the necessity of effectively controlling the menace of narcotic drugs. More recently, while examining the propriety of a bail order, the Supreme Court in ***State of Rajasthan v. Indraj Singh, 2025 INSC 341***, reiterated that while considering bail, the Court cannot lose sight of the primary offence and its effect on Society. At the same time, the Supreme Court clarified that the observations concerning societal impact are for examining the propriety of the bail order and do not amount to a determination of guilt. The concern regarding the adverse impact of narcotic drugs on individuals, families and society, therefore, constitutes a relevant consideration in understanding the legislative purpose of the NDPS Act. Nevertheless, such consideration cannot substitute the specific statutory requirements of Section 37. The ultimate determination in the present petition must rest upon the legality and sustainability of the order granting bail and the requirements prescribed by the statute.

14. Learned counsel for the respondent has emphasised that there is no allegation that the respondent has misused the concession of bail. The submission would have considerable relevance if the UT of J&K was seeking

cancellation solely on the ground of post-bail misconduct or supervening circumstances. However, that is not the only basis on which the present petition is founded. The applicant-UT challenges the very legality of the order dated **28.10.2025** on the ground that the mandatory requirements of Section 37 were not properly applied. In ***State of Rajasthan v. Indraj Singh (supra)***, the Supreme Court has recently reiterated that the distinction between a challenge to the correctness of an order granting bail and cancellation on account of subsequent misconduct must be maintained. Where the order itself suffers from an improper or arbitrary exercise of discretion, the superior Court can examine and set aside such order. Likewise, in ***Mahipal v. Rajesh Kumar, (2020) 2 SCC 118***, the Supreme Court held that the appellate Court must examine whether there was a valid exercise of the power under Section 439 Cr.P.C. and that an order granting bail without proper consideration of relevant factors cannot be allowed to stand merely because the accused has subsequently remained on bail.

15. Having regard to the material placed before this Court, the alleged recovery of over **24 kilograms of ‘ganja’**, the fact that the same exceeds the notified commercial quantity of **20 kilograms**, and the statutory embargo contained in Section 37 of the NDPS Act, this Court is of the considered view that the learned trial Court

was required to record a specific and meaningful satisfaction regarding both the statutory conditions prescribed under Section 37(1)(b)(ii). The impugned order dated **28.10.2025**, when examined in the light of the aforesaid statutory scheme and binding principles laid down by the Supreme Court, does not disclose an adequate consideration of the mandatory requirements of Section 37 of the NDPS Act. The discretion vested in the Court is undoubtedly wide; however, such discretion has to be exercised within the confines of the special statutory restrictions imposed by the NDPS Act. Section 37 of the Act, cannot be reduced to a mere formality or treated as an ordinary consideration which may be overlooked while exercising jurisdiction under Section 439 Cr.P.C. Consequently, this Court finds that the order dated **28.10.2025**, granting bail to the respondent, is not sustainable in law and is liable to be set aside.

16. For the foregoing reasons, the present petition is **allowed**. The order dated **28.10.2025** passed by the learned Special NDPS Court, Pulwama in a case titled '*UT of J&K through P/S Awantipora vs. Shabir Ahmad Dar*', arising out of FIR No.145/2024 registered at Police Station Awantipora, admitting the respondent-accused to bail, is hereby **cancelled**. The respondent-accused shall surrender before the learned trial Court forthwith, and in any event within two weeks from the date of this order, whereupon

he shall be taken into custody, in accordance with law. In default of appearance/surrender, by the respondent-accused as directed, the Trial Court shall proceed in the matter, in accordance with law, adopting coercive methods.

17. It is, however, clarified that the observations made herein are confined strictly to the examination of the legality and propriety of the order granting bail and shall not be construed as an expression of opinion on the merits of the prosecution case and the guilt or innocence of the respondent-accused. Also it shall be open to the respondent-accused to seek bail afresh before the competent Court, which application shall be considered in accordance with law, on its own merits, including the stage of the trial and any subsequent change in circumstances.

18. Copy of this order shall be forwarded to the trial court, for information and compliance.

19. Bail Application is **disposed of**, accordingly, alongwith connected application(s).

(M. A. CHOWDHARY)
JUDGE

Srinagar
05.10.2026.
Muzammil. Q

Whether the order is reportable: Yes / No