

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

Bail App No. 91/2026

KHAYAL SHAFI BADANA. ...Appellant/Petitioner(s)

*Through: Mr. S. T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate.*

Vs.

**UNION TERRITORY THROUGH
POLICE STATION RAJBAGH.** ...Respondent(s)

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE.

ORDER

30.09.2026

01. The petitioner is facing trial in case FIR No. 17/2023, registered for offences under Sections 8/21, 29 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”), which has culminated in presentation of the charge-sheet titled “*UT of J&K through P/S Rajbagh v. Sajjad Ahmad Badana and others*”. The trial is presently in progress.

02. The petitioner had earlier approached the trial Court seeking his enlargement on bail. The said application came to be rejected vide order dated 6th May, 2026, principally on the ground that the petitioner was allegedly involved in trafficking of a commercial quantity of narcotic drugs and that the interests of justice did not warrant his release on regular bail. Insofar as the plea for release on medical grounds was

concerned, the trial Court directed the jail authorities to provide the petitioner all requisite medical treatment and facilities.

03. While pressing his application for bail before the learned trial Court, the petitioner had also invited its attention to order dated 29th April, 2026, passed by a Coordinate Bench of this Court in Bail Application No. 194 of 2025, titled “*Abdul Rashid Kohli v. UT of Jammu and Kashmir*”, contending that the accused therein was a co-accused in the very same FIR.

04. The learned trial Court, however, proceeded on the premise that, since the petitioner had not specifically sought bail on the ground of parity, the aforesaid order was of no assistance to him and, accordingly, rejected his application.

05. The prosecution case, in brief, is that on 6th April, 2023, Police Station Rajbagh received information from reliable sources that Sajad Ahmad Badana and Zaheer Ahmad Tanch were dealing in contraband substances at Kurshoo Bund, Rajbagh, having allegedly procured and transported the same from Karnah to Srinagar for sale. On the basis of the said information, FIR No. 17/2023 came to be registered at Police Station Rajbagh for offences under Sections 8/21 and 29 of the NDPS Act.

06. Pursuant thereto, the police party proceeded to the disclosed location and conducted a search of the rented premises occupied by Sajad Ahmad Badana. During the search, 11 polythene packets containing a heroin-like substance, allegedly concealed beneath a bed, were recovered. The substance was weighed on the spot and was found to be 11 kilograms in aggregate. Cash amounting to Rs.11,82,500/- was also recovered from the premises. During the personal search of the accused and his co-

accused, three mobile phones, besides cash, identity documents and bank cards, were recovered. The articles were seized and the mobile phones were sealed for further investigation.

07. The prosecution further alleges that, upon questioning, the aforesaid accused disclosed their involvement, along with other co-conspirators, in procuring narcotic substances from a person stated to be based across the border in Pakistan and transporting the same from Karnah to Srinagar in a Scorpio vehicle bearing registration No. JK01Q-4141, allegedly by concealing the contraband in its spare-wheel compartment. It is further alleged that a portion of the contraband was sold to other accused persons travelling in a Tata Tiago vehicle bearing registration No. JK09B-3619. The vehicles were thereafter searched, leading, inter alia, to the recovery and seizure of a digital weighing machine and other material alleged to be incriminating.

08. The allegation against the petitioner is that, apart from being related to the principal accused, namely Sajad Ahmad Badana, he had conspired with him and the other co-accused in activities involving unauthorized possession and transportation of narcotic substances. It is further alleged that a part of the money realized from the sale of the contraband was deposited in the petitioner's bank account. On this basis, the prosecution seeks to connect the petitioner with the alleged trafficking of a commercial quantity of contraband.

09. The respondents have opposed the prayer for bail, contending that the application is misconceived and founded on untenable grounds. According to the prosecution, the petitioner and the co-accused were operating a drug-trafficking racket involving unauthorized possession and

sale of contraband in the open market. It is further alleged that the consignment was received from across the border and thereafter distributed within the Union Territory of Jammu and Kashmir, with the proceeds thereof ultimately being utilized for unlawful purposes.

10. It is further contended that, since the petitioner has been implicated with the aid of Section 29 of the NDPS Act, the rigour of Section 37 of the Act squarely applies. According to the respondents, no person accused of an offence to which Section 37 applies can be admitted to bail unless the twin conditions prescribed therein are satisfied. It is urged that the petitioner has failed to demonstrate any material which could render the prosecution case *prima facie* doubtful.

11. The respondents have also emphasized the serious societal consequences of drug trafficking and substance abuse, particularly its deleterious impact upon vulnerable sections of society and the younger generation. It is, therefore, contended that the material collected during investigation sufficiently demonstrates the involvement of the petitioner and that no case for grant of bail is made out.

12. Learned counsel appearing for the petitioner, placing considerable reliance upon the order whereby co-accused Abdul Rashid Kohli was granted bail by this Court, submitted that the allegations against the said co-accused were substantially similar. In that case also, the allegation of conspiracy rested principally upon the disclosure statement of a co-accused and the circumstance that the accused was in telephonic contact with the principal accused. It was argued that mere telephonic contact, in the absence of any voice recording, transcript or other material revealing

the contents of the conversations, would not establish a nexus with the alleged trafficking of narcotic substances.

13. Per contra, learned counsel for the respondents contended that the petitioner's case is distinguishable from that of Abdul Rashid Kohli. It was submitted that no recovery of money relatable to the alleged narcotics transaction was attributed to the said co-accused, whereas, in the present case, certain funds have allegedly been traced to the petitioner's bank account which, according to the prosecution, constitute proceeds generated from the illegal sale of narcotic substances.

14. In response, the counsel for the petitioner submitted that the mere fact that the petitioner is a close relative of the principal accused and that certain amounts were credited to his bank account would not, by itself, connect him with the alleged offence, particularly when there could be independent commercial or personal transactions between the parties. It was contended that unless the prosecution first establishes foundational facts connecting the petitioner with the alleged criminal activity, the statutory embargo contained in Section 37 of the NDPS Act cannot be invoked merely on the basis of accusation.

15. Heard learned counsel for the parties and perused the record. A perusal of the record reveals that co-accused Sajad Ahmad Badana is projected as the principal accused in the charge-sheet. The prosecution case is that he made a disclosure to the effect that he had received a consignment of narcotic drugs from across the border, sold a portion thereof himself and supplied the remaining quantity to other accused persons for sale. It is further alleged that part of the consignment had been procured from one Nazeer Ahmad. The prosecution further alleges

that, at the time of taking delivery of the consignment, Sajad Ahmad Badana was accompanied by the present petitioner, Khayal Shafi Badana, besides co-accused Bashir Ahmad Tanch and Abdul Rashid Kohli. It is alleged that the consignment was subsequently concealed with Bashir Ahmad Tanch and Abdul Rashid Kohli.

16. According to the prosecution, Sajad Ahmad Badana made a disclosure stating that he, in conspiracy with the present petitioner and other co-accused, had procured heroin from Nazeer Ahmad, stated to be residing across the border, and thereafter sold the same to other accused persons by using a Tata Tiago vehicle against cash consideration exceeding Rs.8 lakhs, a part whereof was allegedly deposited in his bank account. Significantly, the petitioner was not arrested along with the principal accused. He appears to have been arrested subsequently, principally on the basis of the disclosure allegedly made by co-accused Sajad Ahmad Badana.

17. The prosecution also relies upon the disclosure allegedly made by accused No.5, Ghairat Ali Bajad, to the effect that he, in conspiracy with the present petitioner, had procured heroin from accused Nos.1 and 2. It is alleged that an amount of Rs.15,000/- was transferred through net banking to the account of accused No.1, whereas another amount of Rs.5,000/- was transferred to the account of the present petitioner. The record further reveals that, during investigation, cash amounting to Rs.11,82,500/- was got authenticated through various branches of J&K Bank.

18. The investigation further suggests that, on 13th March, 2023, the petitioner, along with the co-accused, had proceeded from Rajbagh

towards Karnah, where accused Nos.3 and 4 were already present. The prosecution also relies upon call detail records to contend that the petitioner remained in direct and regular contact with co-accused Sajad Ahmad Badana.

19. Admittedly, no contraband or other incriminating article has been recovered from the possession of the petitioner. Insofar as telephonic communication is concerned, the principal material relied upon by the prosecution comprises call detail records showing contact between the petitioner and co-accused Sajad Ahmad Badana. It is not disputed that the two are close relatives and, therefore, communication between them, by itself, cannot necessarily assume an incriminating character. Though the call detail records indicate regular contact, they neither disclose the nature nor the contents of the conversations exchanged between them. The other circumstance relied upon by the prosecution is the alleged credit of certain amounts into the petitioner's bank account which, according to the prosecution, represent proceeds generated by co-accused Sajad Ahmad Badana from the sale of narcotic substances.

20. Learned counsel for the petitioner has sought to explain the said transaction by submitting that the amount was relatable to a loan transaction between the petitioner and his brother-in-law and had no connection whatsoever with the alleged possession, sale or trafficking of narcotic substances. The trial is presently underway and the petitioner is stated to have remained in custody since his arrest pursuant to the filing of the charge-sheet.

21. The prosecution case, therefore, is essentially that the petitioner, along with co-accused Abdul Rashid Kohli, who has already been

enlarged on bail by this Court, and the principal accused, remained in constant association in relation to the alleged possession and sale of narcotic substances. It bears reiteration that no recovery has been effected from the petitioner. Likewise, although the call detail records establish telephonic contact between him and the principal accused, they do not disclose the nature or contents of such conversations. No voice recording or transcript of the alleged conversations forms part of the material relied upon by the prosecution.

22. Section 37 of the NDPS Act has received consideration in a catena of judicial pronouncements. While the statutory rigour engrafted therein cannot be diluted, the provision cannot be construed as laying down an inflexible proposition that refusal of bail is the rule and grant thereof an exception irrespective of the quality of material collected against an accused. The satisfaction contemplated by Section 37 has necessarily to be arrived at upon consideration of the material placed before the Court. Had there been a recovery from the possession of the petitioner, or material prima facie indicating conscious possession attributable to him, the prosecution could have relied upon such circumstance as a foundation for drawing the statutory presumptions available under the NDPS Act regarding knowledge or intent. Mere presence in the company of a co-accused, however, cannot, without something more, lead to a presumption that the petitioner was conscious of, or privy to, the alleged criminal activity.

23. A perusal of the record of the learned trial Court reveals that the petitioner has essentially been charged with the aid of Section 29 of the NDPS Act, which makes abetment and criminal conspiracy punishable. Admittedly, the call detail records do not reveal what transpired during

the conversations between the petitioner and the principal accused. In a criminal prosecution, mere association with an accused cannot substitute the requirement of foundational material demonstrating that the person concerned had knowledge of, and consciously participated in, the alleged unlawful activity.

24. Except for the disclosure attributed to the co-accused which may have such evidentiary relevance at trial as is permissible in law, the material presently relied upon against the petitioner does not disclose independent incriminating circumstances of such quality as would, for the purposes of consideration of bail, justify his continued incarceration. It is also significant that co-accused Abdul Rashid Kohli, against whom substantially similar allegations were made, including that he had accompanied the principal accused and remained connected with him through call detail records, has already been enlarged on bail by a Coordinate Bench of this Court.

25. The plea of parity with Abdul Rashid Kohli was raised before the learned trial Court and has been reiterated before this Court. The prosecution has not been able to satisfactorily demonstrate any material distinction between the role attributed to the petitioner and that attributed to the aforesaid co-accused so as to justify differential treatment in the matter of bail. The material relied upon against the petitioner thus comprises principally the disclosure statements of the co-accused, the call detail records and the allegation that certain amounts were credited to his bank account. At this stage, however, the material does not clearly establish that the amount allegedly credited to the petitioner's account was directly relatable to the proceeds derived by Sajad Ahmad Badana from the sale of narcotic substances.

26. It has been argued on behalf of the prosecution that the frequency of calls between the petitioner and the co-accused increased particularly after 21st March, 2023, i.e., after the co-accused had allegedly received the consignment which was ultimately recovered on 6th April, 2023. Nevertheless, unless there is material indicating what transpired during such telephonic communications, the mere frequency of calls cannot, at this stage, furnish a sufficient basis for concluding that the petitioner was conscious of the fact that the co-accused was engaged in possession or trafficking of narcotic substances.

27. Section 37 of the NDPS Act mandates that, in cases to which the provision applies, an accused shall not be released on bail unless the Court is satisfied, inter alia, that there are reasonable grounds for believing that he is not guilty of the alleged offence. In the present case, having regard to the nature and quality of the material collected during investigation and placed before the learned trial Court, this Court is satisfied, for the limited purpose of consideration of bail, that reasonable grounds exist for believing that the petitioner may not be guilty of the offence alleged against him. The petitioner has also been able to demonstrate that he is similarly situated to a co-accused who has already been granted bail. In the absence of any material distinction of substance, denial of bail to the petitioner on substantially similar facts would result in unequal treatment vis-à-vis the said co-accused.

28. Parity is a relevant consideration while exercising judicial discretion in matters of bail, though it is not to be applied mechanically. Another circumstance which weighs with this Court is that the petitioner was not arrested contemporaneously with the recovery of the contraband. He came to be arrested subsequently when the financial transactions

emanating from the account of the co-accused were being investigated and verified. There can be no gainsaying that trafficking in narcotic drugs poses a grave threat to public health and social order, with particularly serious consequences for the younger generation. The seriousness of the offence, however, cannot by itself justify indefinite pre-trial incarceration where the foundational material relied upon to attract the statutory rigour of Section 37 of the NDPS Act is not, at this stage, sufficiently compelling qua the particular accused.

29. Although the rigour of Section 37 of the NDPS Act cannot be diluted while considering bail in cases involving commercial quantity, the facts of the present case reveal that no recovery has been effected from the petitioner. Further, the call detail records are not accompanied by any voice recording or transcript which could *prima facie* indicate that the petitioner had knowledge of, or consciously participated in, the activities allegedly undertaken by the co-accused. Likewise, the mere fact that certain amounts were deposited in or transferred to the petitioner's bank account cannot, *ipso facto* and in the absence of material establishing their nexus with the alleged proceeds of narcotics trafficking, lead to a presumption that the petitioner was a participant in the alleged conspiracy or cartel.

30. For the foregoing reasons, the petition is allowed. The petitioner is directed to be released on bail, subject to furnishing bail and personal bonds to the satisfaction of the trial Court and subject further to the following conditions:

(i) The petitioner shall furnish a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the trial Court;

(ii) The petitioner shall appear before the trial Court on each and every date of hearing, unless his presence is specifically exempted by the Court, till conclusion of the trial;

(iii) The petitioner shall not leave the territorial limits of the Union Territory of Jammu and Kashmir without prior permission of the learned trial Court; and

(iv) The petitioner shall not, directly or indirectly, intimidate, influence or induce any prosecution witness, nor shall he tamper with the prosecution evidence in any manner whatsoever.

31. Disposed of.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:
30.09.2026
"Shaista-PS"

