Serial No.
Suppl. Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Bail App No. 44/2024

Reserved on: 05/03/2026
Pronounced on: 25/11/2026
Uploaded on: 25/11/2026

1. **Mohammad Afshaan Jan**
   S/o. Mohd Ismail Jan
   R/o. Baghaat Barzulla, Rawathpora Srinagar

2. **Shabir Ahmad Mir**
   S/o. Ghulam Ahmad Mir
   R/o. Baghaat Barzulla, Rawathpora Srinagar

…Petitioner(s)/Appellant(s).

Through: Mr. Irfan Andleeb, Advocate

Vs.

1. **Union Territory of Jammu and Kashmir through Police Station, Batmaloo, Srinagar Kashmir**
2. **S.H.O Police Station, Batmaloo**

...Respondent(s).

Through: None

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

1. Through the medium of the instant successive petition, having been filed in terms of provisions of Section 439 of the erstwhile and repealed Code of Criminal Procedure, 1973, applicable in the case and hereinafter referred to as the 'Code' for short, corresponding to provisions of Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short), bail on behalf of the petitioners/accused, namely, Mohammad Afshaan Jan and Shabir Ahmad Mir, both residents of Rawathpora, Barzulla, Srinagar, in case FIR No. 18/2022 of Police Station, Batmaloo under Sections 8/21, 29,

27A NDPS Act, 468, 471, 473 IPC, has been sought on the grounds, inter alia, that they are law-abiding citizens of India, domiciled in the Srinagar District of Union Territory of Jammu and Kashmir, and as such entitled to seek the enforcement of their constitutional and other statutory rights guaranteed to them. That they are innocent and have not committed the offences alleged against them.

That they have been implicated in the case FIR in question after a period of three months from the date of arrest of the main accused, on the basis of their alleged statements under Section 67 of NDPS Act, as also the confessional statements of the other co-accused. That the alleged grounds basing their involvement, which are their own alleged statements in terms of provisions of Section 67 NDPS Act, as well as the confessional statements of the co-accused, cannot sustain for want of any further corroboration, as nothing has been recovered from them or at their instance pursuant to the alleged statements and disclosure. That they came to be arrested in the case on 23/03/2022.

That the case FIR bearing No. 18/2022 came to be registered by the Police Station, Batmaloo on the receipt of an information that a huge consignment containing manufactured narcotic drug (Codeine Phosphate) has been received at Upkar Goods Transport Company, situated at Tengpora, Srinagar. That the said consignment was dispatched in the name of Sikander Pharma, 701 Muslimabad, N.R. Colony, with Sikander Firdous Ahmed as proprietor of the firm. That during initial investigation, the other two accused, Rameez Yousuf Dar and Abid Hassan Dar, were

found to be dealing with the contraband. That they filed a bail application before the learned trial court of 4th Additional Sessions Judge, Srinagar, which, however, came to be rejected by the learned trial court vide its order dated 08.04.2024 passed on the same.

That the learned trial court did not appreciate the fact and the law to the effect that they could not have been believed to have prima facie committed the alleged offences, as nothing was recovered from them or at their instance pursuant to the alleged disclosure statements of co-accused, as also of their own statements under Section 67 NDPS Act. That their involvement in the case without any basis, on the uncorroborated and unsupported alleged disclosure statements, goes against the spirit of the celebrated judgment of the Hon'ble Supreme Court passed in **"Tofan Singh versus State of Tamil Nadu, Crl Appeal No. 152 of 2013 decided on 29th October, 2020"**. That the allegation that they have financed the illicit traffic in narcotic substance is devoid of any proof, as their bank account transactions could not be connected to the alleged seized contraband.

That the rigor of the provisions of Section 37 NDPS Act is not applicable in the case, as no reasonable grounds appear in the facts and circumstances of the case regarding their involvement. That mere severity of punishment provided for the offences charged against them should not weigh with the Court if the circumstances placed on record otherwise make out a case for bail in their favour, as such proposition of law has already been laid down by this Court while allowing the bail application

under similar circumstances in **"Phool Chand versus Narcotic Control Bureau, Bail Application No. 301/2022 decided on 22.11.2022"**. That in the course of their being subjected to identification parade by the investigating authority before the Upkar Transport Company, the latter company denied their involvement in procuring the contraband through the said company on behalf of Sikandar Pharma, which is the proprietorship firm of main accused, namely, Sikandar Firdaus, from whom the contraband has been recovered.

That the aforesaid company of Upkar Transport stated to the investigating agency that they, i.e. the petitioners/accused, were visiting the company on behalf of Bhat Pharma and not on behalf of Sikandar Pharma. That they have been in custody in the case since their arrest on 23/03/2022 and the trial of the case is likely to take a substantial period before its conclusion. That out of **43** listed prosecution witnesses, only **four to five** witnesses have been examined at the trial so far, with majority of the witnesses yet to be examined. That they have got their fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India and, as such, the trial against them has become oppressive. That there is no immediate prospect of the conclusion of the trial, as most of the prosecution witnesses are yet to be examined. That the Hon'ble Supreme Court in **"Mohd Muslim @ Hussain versus State (NCT of Delhi), SLP (Crl) No. 915/2023: 2023 INSC 311",** while recognizing the speedy trial as an important facet of Right to Life guaranteed under Article 21 of the Constitution of India, observed that

grant of bail sought on the ground of long incarceration and undue delay in the trial cannot be said to be fettered by the provisions of Section 37 of the NDPS Act. That they are deeply rooted in the society and, as such, there is no risk of their flight at the trial. That they shall abide by any conditions that may be imposed by this Court.

2. The respondent-Police Station has, however, resisted the instant bail application on the grounds that the same is liable to be outrightly dismissed as being meritless. That the petitioners are involved in the commission of heinous offences punishable under the NDPS Act in relation to commercial quantity, as also the financing of the illicit trade in narcotic substances. That they have been arrested in the case upon being found involved pursuant to the disclosure statement of the co-accused, as also their own statements recorded in terms of provisions of Section 67 of the NDPS Act. That the fabrication of documents in respect of non-existing firms was ascertained during the investigation of the case pursuant to the disclosure of the co-accused, rendering such disclosures admissible under law. That the investigation in the case has culminated in the filing of the final report/charge-sheet before the Court of learned 4th Additional Sessions Judge, Srinagar. That there are Six (6) accused in the case involving the petitioners, and all of them stand formally charged in the case vide order dated 13-06-2023 of the learned trial court. That the petitioners/accused are involved in the commission of heinous, non-bailable and highly anti-social offences having adverse effect on the society. That the menace of drug addiction has engulfed the society and has been creating havoc to the

families, owing to which fact, the guilty persons need to be dealt with a heavy hand. That the petitioners/accused, during the investigation of the case, have been found prima facie involved in the commission of the offences under the NDPS Act. That they have been even charged for the commission of the said offences at the trial of the case vide order dated 13.06.2023 of the learned trial court. That there are reasonable grounds to believe and apprehend that petitioners/accused will jump over the concession of bail, if granted in their favour, by absconding at the trial and repeating the commission of crime. That the liberty of an individual needs to be balanced against the collective interests of the society and the detention of the petitioners is by way of a reasonable exception to their fundamental rights guaranteed under Article 21 of the Constitution. That the learned trial court has rightly refused bail to the petitioners, as the grant of same was not warranted in the facto-legal scenario of the case.

3. I have heard the learned counsel for the petitioners in respect of the matter. However, the respondent remained consecutively unrepresented in the matter during last couple of hearings before the Court, and none came to argue the case despite ample opportunities, as is revealed from the interim order dated 05.02.2026 passed in the matter.

4. I have perused the record of the instant bail petition, including the order of the learned trial court dated 08.04.2024 passed on the earlier bail application of the petitioners, while rejecting the same. I have given thoughtful consideration to the arguments advanced at the bar by the learned counsel for the petitioners.

5. The brief facts of the case relevant for disposal of the instant bail petition are that on 08.02.2022, Police Station, Batmaloo received information through reliable sources to the effect that at Tengpora, a consignment in the name of Sikander Pharma, Muslimabad, NR Colony Phone No. 9469184805, PAN No. CKTPA59493, DL No. 20-SB-21798/21-SB-21799 reached at Upkar Goods Transport Pvt. Ltd., situated at Tengpora Bypass, belonging to some unknown person(s), containing huge quantity of contraband substances used to drive youth into drug addiction. That upon receipt of the said information, case FIR No. 18/2022 under Section 8/21 NDPS Act came to be registered with the Police Station, Batmaloo and investigation set in motion. That during the course of investigation, the said consignment was found to contain Codeine Phosphate under brand name "B-PEN C", sealed bottles in 96 crates containing in total 2400 bottles, each bottle of 100ml liquid. That statements of the witnesses conversant with the facts of the case came to be recorded. That two bills in the name of Sikander Pharma 701 Muslimabad, NR Colony and invoices (billties), five (05) in number, bearing the seal and stamp of Sikander Pharmaceutical, Muslimabad, were seized in the case.

6. That necessary seizure and sampling was done in respect of the recovery of contraband substance. That during investigation it came to fore that Sikander Pharma is neither a company located in Muslimabad NR Colony nor it exists anywhere, indicating that the person Sikander Firdous Ahmed has managed to prepare fake and forged documents in the name and style of Sikander Pharma for purchasing and selling of contraband

substances illegally among the youth. That the accused Sikander Firdous Ahmed came to be arrested in the case on 15-02-2022. That during further investigation, upon the analysis of the CDR of the given phone numbers, other accused-Rameez Yousuf Dar S/o. Mohammad Yousuf Dar R/o. Mini Colony, Chanapora, came to be found involved in the case.

That the said person, at the relevant time, was found arrested by Police Station Nowhatta in case FIR No. 09/2022 under Sections 8/21, 29 NDPS Act, who also was found to have made a disclosure in the said case FIR of Police Station Nowhatta to the involvement of Abid Hassan Dar and Sikandar Firdous jointly with him in the sale of illegal contraband substances, with the further lead regarding the preparation of fake and forged firm under the name and style of Sikander Pharma, 701 Muslimabad, NR Colony, Bemina, Srinagar, for receipt of consignment of contraband substances (Codeine Phosphate) from outside the Valley through Upkar Goods Transport Company, Bypass, Tengpora. That the custody of the said accused Ramiz Yousuf Dar came to be changed in the FIR in question bearing No. 18/2022 of Police Station Batmaloo, who, during investigation, is reported to have made disclosures.

That during the course of investigation and upon the analysis of bank account statements of the arrested/accused Rameez Yousuf Dar, the involvement of present petitioner, namely, Shabir Ahmed Mir and Mohammad Afshasn Jan, also surfaced. That the present petitioners are found to have been paying handsome amounts to the accused Rameez Yousuf Dar in connection with procurement of contraband narcotic

substance. That co-accused-Abid Hassan Dar also came to be arrested in the case, and it came to be further known that the said accused Abid Hassan Dar, along with Rameez Hassan Dar and Sikandar Firdous Ahmed, used to sell the Codeine Phosphate among the youth. That the petitioner-Mohammad Afshaan Jan, upon his arrest, has made a disclosure that he, along with other accused, namely, Abid Hassan Dar, was working as salesman and they used to receive contraband substances (Codeine Phosphate) from Shabir Ahmed Mir (petitioner) and Rameez Yousuf Dar, which was being sold among the youth at high rates and the money collected from the sale of the contraband substance (Codeine Phosphate) used to be distributed equally among them.

That the cell phones of the present petitioners, namely, Mohammad Afshaan Jan and Shabir Ahmad Mir, came to be recovered from their respective houses, and both of them disclosed that the SIMs used by them in their phones were destroyed by them as soon as they heard the news of arrest of one of their associates, namely, Rameez Yousuf Dar. That some suspicious data was retrieved from the said phones. That the petitioners/accused, upon their arrest, made disclosure relating to the fake drug licenses under the name and style of M/s Meer Pharmaceuticals and Bhat Pharmacy. That upon verification, both the firms were found fake and non-existent, whereupon offences under Sections 468, 471 and 473 were added in the case FIR.

7. As hereinbefore mentioned, the petitioners/accused have sought their enlargement through the medium of the instant successive bail petition on

the two main grounds. (1.) That they have been falsely and frivolously implicated in the case FIR and, as such, deserve to be granted bail. That they stand involved in the case on the basis of the confessional statements of the main accused, as well as their own statements under Section 67 NDPS Act. That they have not made any disclosure themselves and the alleged disclosure statements of co-accused are not relevant and admissible, as nothing has been recovered from their conscious possession. That the bar in terms of provisions of Section 37 of NDPS Act is not attracted at all in their case, as there seem no reasonable grounds of their involvement in the case.

(2). That **without prejudice** to their stand taken and as mentioned against point No. 1, they are entitled to bail in the case on account of their long incarceration. That they have been arrested in the case on 23/03/2022 and have been continuously facing detention in the case for a period of **four years and about nine months**. That out of total **43 prosecution** witnesses, only **four to five** were examined till the date of rejection of their earlier bail application. That their long incarceration with no prospect of the conclusion of the trial in the near future entitles them to bail, and as the rigor of Section 37 NDPS Act melts down when a constitutional court is approached for grant of bail on account of long incarceration with no prospect of trial ending in near future.

8. The learned counsel for the petitioners during his arguments also lamented on the aforesaid two grounds. He, during his arguments, contended that the alleged disclosures of the co-accused, as well as their

own alleged statements, are not at all relevant and admissible in evidence in the case, as nothing has been recovered from the conscious possession of the petitioners, who came to be arrested in the case on 23/03/2022, after a period of more than one month from the alleged occurrence. The learned counsel during his arguments submitted that the aforesaid statements are not relevant and admissible to the extent of petitioners in view of the celebrated judgment of the Hon'ble Supreme Court of India delivered in **"Tofan Singh versus State of Tamil Nadu, decided on 29th October, 2020"**. He contended that it has been authoritatively laid down in the case that the disclosures or admissions made before the police officers during investigation are not relevant unless followed by some sort of recovery or identification of a new fact.

9. The learned counsel further contended that the petitioners/accused have not at all been found connected with the alleged occurrence covered under FIR No. 18/2022 of Police Station, Batmaloo. He contended that the police station concerned has attempted to implicate them in the case FIR on account of their alleged past involvement in respect of different acts/occurrences.

10. The learned counsel further contended that the petitioners have been facing incarceration in the case for more than **four and a half years**, when there is no prospect of the conclusion of the trial in the near future. The learned counsel also contended that the offence of conspiracy punishable under Section 29 of NDPS Act is not at all attracted in relation to the present petitioners.

11. The learned counsel also placed reliance on the judgments cited as:

I. *Phundreimayum Yas Khan vs State (GNCT of Delhi) Bail App No. 1383/2022.*

II. *Ghulam Mohd Bhat vs Narcotic Control Bureau Bail App No 409/2021*

III. *Rayees Ahmad Dar vs Union Territory of J&K Bail App No. 05/2022.*

IV. *Phool Chand vs Narcotics Control Bureau Bail App No. 301/2022.*

V. *Dr. Samiullah Dar vs UT of J&K CRM(M) No. 170/2023.*

12. Admittedly, the petitioners stand charged in the case at the trial on 13.06.2023. The petitioner-Shabir Ahmad Mir stands charged for the commission of the offences punishable under Sections 8/21, 29, 27A NDPS Act and Sections 468, 471, 473 IPC, when the petitioner/accused-Mohammad Afshaan Jan has been charged for the commission of offences punishable under Sections 8/21, 29, 27A NDPS Act. The prosecution evidence was called by the learned trial court pursuant to the pleading of 'not guilty' by the accused, including the present petitioners.

13. As per the latest status of the trial requisitioned from the learned trial court, **26 prosecution witnesses out of the total list of 43 witnesses have been examined till date.** However, it has been reported by the learned trial court that calendar has been fixed in this case and the file is not adjourned for a period exceeding 15 days.

14. The case in hand needs to be considered while keeping focus on the provisions of Section 37 of the NDPS Act, which create a bar on the grant of bail under some circumstances, as also on the provisions contained under Sections 35 and 54 of the NDPS Act, which provide for

presumptions. It is accordingly felt profitable to reproduce the provisions of the aforesaid sections of law for the sake of convenience:

Section 37 — Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail.

Section 35 — Presumption of culpable mental state.

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation. — In this section, “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 54 — Presumption from possession of illicit articles.

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of any narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.

15. The petitioners/accused have been charged for the commission of offences punishable under Sections 8/21, 29 NDPS Act in relation to commercial quantity of manufactured narcotic drug containing Codeine Phosphate in mixture. They stand also charged for the commission of offences punishable under Section 27A of the NDPS Act, which provides punishment for financing illicit traffic in narcotic drugs and psychotropic substances. One of the petitioners, namely, Shabir Ahmad Mir, in addition, stands charged for the commission of offences punishable under Sections 468, 471 and 473 IPC.

16. In view of the provisions of Section 37 of the NDPS Act, the petitioners, having regard to their involvement in the case, can seek bail only when the Public Prosecutor has been given an opportunity to oppose

the application for such release and, secondly, where the Public Prosecutor opposes the applications and the Court is satisfied that there are reasonable grounds for believing that they are not guilty of such offences and that they are not likely to commit any offence while on bail.

17. Admittedly, the learned Senior AAG has filed detailed and exhaustive objections in the case on behalf of the respondent-State.

A criminal court, while recording its satisfaction as to whether there appear "reasonable grounds" of involvement of an accused in the commission of an offence attracting the bar in terms of provisions of Section 37 NDPS Act, has to use its discretion in a judicious manner so that no miscarriage of justice happens either by grant of bail or by denial of the same.

The "reasonable grounds" of involvement can be inferred from the facts and circumstances of the case, especially the nature of the evidence. The Court is supposed to consider the broader probabilities to reach its supposition regarding the existence of reasonable grounds of involvement of the accused.

The words "reasonable grounds" cannot be read to mean proved as used in the Bharatiya Sakshya Adhiniyam. Such an interpretation would, in my opinion, set at naught the power vested in a court to grant bail pending trial.

The expression "reasonable grounds" would obviously mean something more than mere suspicion and conjectures and something less than proof. It would necessarily mean such grounds or material that would

prima facie enable a person of ordinary prudence to believe that the accused is or is not guilty.

It is no doubt true that the object of the legislation of such disabling provisions is to prevent the offenders from immediately granting bail in heinous offences. In this view of the matter, the court is required to examine the material placed before it and then to arrive at a conclusion that there exist “reasonable grounds” to believe that the accused is guilty or not guilty.

The “reasonable grounds” would vary from case to case and from one accused to another. What may be reasonable in one case may not be so in another, and therefore, the words “reasonable grounds” cannot, on account of a discretion vested in the court, be put into a straight jacket. Each case would have to be dealt with and examined on its own facts and decided keeping in view the mandate of law. The consideration at the time of taking up of the bail application for disposal is different from the consideration adopted at the end of the trial for holding an accused guilty or not guilty. In considering an application for bail, court is not required to conduct a preliminary trial. The Courts, while deciding bail applications, will be traversing beyond their ambit and would be exceeding their limit of functions if they engage themselves in discovering the guilt or innocence of the accused, which can only be determined at the trial stage. The courts should not go at a tangent in order to find out the possible excuses for grant bail. Whether there are “reasonable grounds” or not is the question which must be decided judicially, that is to say, there should be some tangible

evidence on which the Court might come to the conclusion that, if unrebutted, the accused might be convicted. Whether there are reasonable grounds for believing that a person is guilty of such an offence depends on what evidence is offered by the prosecution to the charge against him.

In order to come to the conclusion that a person is guilty, the Court must consider the evidence which, if unrebutted, may lead to the conclusion that the charge against him stands proved and cannot unjustifiably hold that there are "reasonable grounds" for believing that he is guilty. It is a settled position of law that the real question whether there are reasonable grounds for believing that a person is guilty of offences attracting the bar under Section 37 NDPS Act depends upon what evidence is offered by the prosecution to prove the charge against him. While reaching such conclusion, the Court must consider the nature and character of evidence against him.

18. Admittedly, the Hon'ble Supreme Court has in the case of **"Narcotics Control Bureau vs. Mohit Aggarwal, 2022 Live Law (SC) 613"**, after relying upon its earlier judgments on the subject, observed as under:

> "14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an additional consideration that

the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."

19. As hereinbefore mentioned as many as Seventeen **(17)** prosecution witnesses are yet to be examined in the case as per the status report dated 21.11.2026, which is likely to take much more time. The petitioners from or at whose instance no contraband drug or substance is reported to have been seized and who stand charged in the case mainly on the basis of conspiracy and financing illicit trade as also in the commission of offences under IPC for fabrication of false documents, the nature of which cannot be commented upon at this stage, have been under custody in the case since last more than **Four and a Half Years.**

20. One of the earliest judgments on the concept of speedy trial was delivered by the Hon'ble Supreme Court in the case of **"Hussainara Khatoon vs. Home Secretary, State of Bihar, (1980) 1 SCC 81"**. In the said case, the Hon'ble Court deprecated the delay in commencement of

trials, which would apply equally to long pendency of trials. The Court observed that un-necessarily prolonged detention in prison of under trials before being brought to the trial, is an affront to all civilized norms of human liberty. The Court observed as under:

> “There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under-trial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."
>
> So also Article 3 of the European Convention on Human Rights provides that: "every one arrested or detained…..shall be entitled to trial within a reasonable time or to release pending trial."
>
> We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed

by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21? That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date…."

21. In **"Supreme Court Legal Aid Committee vs. Union of India, (1994) SCC 731"**, the Hon'ble Supreme Court dealt with the issue of delay in trial in the following manner:

"…….In substance the petitioner now prays that all under-trials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Words and Phrases, Section 309 of the Code. It is also true that this Court has emphasized in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty "must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial….

Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed, we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab10. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S.

Nayak11, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21 As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively, he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us…."

22. Again, in **"Umarmia alias Mamumia vs. State of Gujarat, (2017) 2 SCC 731"**, the Hon'ble Supreme Court, while granting bail to an under trial who had been in custody for about 12 years, observed as under: -

"…..This appeal is filed against the judgment dated 16-6-2010in Criminal Misc. Sr. No. 44 of 2010 by which the Court of Designated Judge (TADA) at Porbandar (hereinafter referred to as "the Designated Court") rejected the bail application filed by the appellant under Section 439 Cr P C and Section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the Act"). Crime No. I-43 of 1994 was registered under Section 154 Cr P C for the offences committed under Sections 121, 121-A, 122, 123, 124-B read with Section 34 of the Penal Code, 1860, Sections 25(1-A), (1-B) and 25(1-AA) of the Arms Act, Section 9-B of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosive Substances Act and Sections 3, 4 and 5 of the Act.

2.The statement of one Suresh recorded under Section 108 of the Customs Act revealed that explosive substances, powder RDX boxes, bags containing firearms, 45 bags of weapons, 15 boxes of RDX and 225 pieces of silver ingots were smuggled into the country and taken to Zaroli and Dhanoli Villages of Valsad District. The first charge-sheet was filed on 12- 1-1995in which the name of the appellant is found at Serial No. 1 in Column 2 which refers to persons who were absconding. The 11th supplementary charge sheet was filed on 6-6-2005 wherein it was mentioned that the appellant was arrested at 1700 hrs on 10-12-2004.

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After considering the submissions of both sides, we are of the opinion that the appellant is entitled to be released on bail for the following reasons:

A. The prior approval required under Section 20-A(1) of the TADA Act was not taken from the District Superintendent of Police before the FIR was recorded.

B. Admittedly, the appellant had been suffering incarceration for more than 12 years.

C. Only 25 out of 192 witnesses have been examined so far.

D. There is no likelihood of the completion of trial in the near future.

E. Though there is a confessional statement of the appellant recorded under Section 15 of the TADA, the same cannot be looked into by us in view of the violation of Section 20-A(1) of the TADA Act.

11. This Court has consistently recognized the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See Supreme Court Legal Aid Committee v. Union of India \[Supreme Court Legal Aid Committee (Representing Under trial Prisoners) v. Union of India, (1994) 6 SCC 731: 1995 SCC (Cri) 39\] and Shaheen Welfare Assn. v. Union of India \[Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366\] .) The accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. \[See Paramjit Singh v. State (NCT of Delhi) \[Paramjit Singh v. State (NCT of Delhi),(1999) 9 SCC 252: 1999 SCC (Cri) 1156\] and Babba v. State of Maharashtra \[Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118.

12. Though the appellant is involved in serious offences and has absconded for a period of 10 years before he was arrested in 2004, we see no reason to confine him to jail as he has already suffered more than 12 years in custody and the trial may not be completed in the near future. Taking note of the above, we grant relief of bail to the appellant subject to the following conditions…….”

23. In the case of **"Union of India vs. K. A. Najeeb, (2021) 3 SCC 713"**, a three Judge Bench of the Hon'ble Supreme Court, while considering the long incarceration as also the effect of rigour of Section 43-D(5) of the UAPA Act, observed as under:

> "17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonized. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

24. In yet another judgment in the case of **"Ashim alias Asim Kumar Haranth Bhattacharya vs. National Investigation Agency, (2022) 1 SCC 695"**, the Hon'ble Supreme Court observed as under:

> "9. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW 1/de facto complainant has still not been completed and there are 298 prosecution witnesses in the calendar of witness although the

respondent has stated in its counter-affidavit that it may examine only100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6-7- 2012 and has completed nine-and-half years of incarceration as an under trial prisoner.

10. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the under trials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge him on bail.

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice."

25. Again, in the case of **"Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & Anr. 2021 Live Law (SC) 376",** the Hon'ble Supreme Court, relying up the ratio laid down in "K. A. Najeeb's case (supra)", observed that no accused can be subjected to unending detention pending trial, especially when law presumes him to be innocent until proven guilty. It has been further observed that even when statutory provisions expressly bar the grant of bail after a reasonably long period of incarceration, such stringent provision will melt down.

26. The Hon'ble Supreme Court in **"Saudan Singh vs. State of Uttar Pradesh (Criminal Appeal No. 308/2022)"**, while deciding a bunch of petitions, granted bail to the petitioners who were suffering from incarceration during different periods ranging from **5 to 10/15years.**

27. The petitioners/accused also have been suffering detention in the case FIR in question since last more than four and a half and still the trial of the case is likely to take some more time to conclude.

28. The Hon'ble Supreme Court in case titled Tapas Kumar Palit vs. State of Chhattisgarh Crl Appeal No.738/25 decided on 14.02.2025 enlarged the appellant to bail on account of his continued incarceration. It is profitable to reproduce the paras 5 to 15:

> 5. The appellant was arrested on the very same date i.e. 24th March, 2020. At the end of the investigation charge-sheet came to be filed.
>
> 6. The trial is in progress. Till this date the prosecution has been able to examine 42 witnesses. The prosecution intends to examine as many as 100 witnesses. We are conscious of the Order passed by us taking the view that once the trial commences and the witnesses are being examined then in serious crimes like murder, dacoity, rape, etc, the Court ordinarily should not exercise its discretion for the purpose of grant of bail, more particularly, looking into the evidence which has come on record.
>
> 7. However, this is a case in which the appellant is in custody as an under trial prisoner since 24th March, 2020. He has no other antecedents. The panch witnesses to the recovery panchnama have also turned hostile.
>
> 8. It's been now 5 years that he is in judicial custody. The learned counsel appearing for the State has no idea as regards the time

likely to be consumed to complete the recording of the oral evidence.

9. In such circumstances, we are left with no other option but to order release of the appellant on bail. We do not undermined the seriousness of the crime that has been alleged.

10. However, many times we have made ourselves very clear that howsoever serious a crime maybe the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.

11. Before we close this matter, we would like to observe as to why the Public Prosecutor wants to examine 100 witnesses. Who are these 100 witnesses? We are aware that it is the public prosecutor who could be said to be in-charge of the trial and he has to decide who is to be examined and who is to be dropped. But at the same time, no useful purpose would be served if 10 witnesses are examined to establish one particular fact.

12. The aforesaid results in indefinite delay in conclusion of trial. It is expected of the Public Prosecutor to wisely exercise his discretion in so far as examination of the witnesses is concerned.

13. Where the number of witnesses is large, it is not, in our opinion, necessary that everyone should be produced. In this connection, we may refer to Malak Khan vs. Emperor [AIR 1946 Privy Council 16] where their Lordships observed as follows at page 19:-

> "It is no doubt very important that, as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of counsel for the prosecution and though a Court ought, and no doubt will, take into consideration

the absence of witnesses whose testimony would be expected, it must judge the evidence as a whole and arrive at its conclusion accordingly taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses."

14. In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing that any other witnesses might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an under trial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of long trials on accused persons who remain innocent until proven guilty can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job or accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.

15. We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code

provides many tools for the Judges to use in order to ensure that cases proceed efficiently.

29. In "**Rubi Prakash versus State of Odisha, 2023 Livelaw (S.C.) 533"**, the Hon'ble Apex Court, while granting bail on the ground of delay in trial, observed at paragraph 4 of its judgment that:

> "4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent-State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than **three and a half years in custody**. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

30. The Hon'ble Supreme Court of India in Manish Sisodia vs. CBI (2024) 1 CRIMES (SC) 154 has held that right to bail in case of delay should be read into the section 439 CrPC and section 45 of PMLA. The relevant para is reproduced under:

> "The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations**, should be read into Section 439 of the Code and Section 45 of the PML Act.** The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable

to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years".

31. The likelihood of delay in trial is a key factor in the determination of the grant/refusal of bail and Hon'ble Apex Court in **Indrani Pratim Mukerjea vs. Central Bureau of Investigation** decided on 18th May, 2022 *inter alia* held as under:

> "Admittedly, the petitioner has been in custody for 6½ years. We do not intend to comment on the merits of the case which might be detrimental to the interest of either the prosecution or the defence. Taking into account the fact that the petitioner has been in custody for 6½ years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not complete soon, we are of the considered view that the petitioner is entitled to be released on bail,"

32. The Hon'ble Supreme Court in **"Nitish Adhikary @ Bapan v. The State of West Bengal", Special Leave to Appeal (Crl.) No. 5769/2022"**, directed the release of the appellant/accused on the ground that he had undergone custody for a period of one year and seven months and the trial was at the preliminary stage.

33. The provisions of Sections 35 and 54 of the NDPS Act, providing for presumption are in the form of additional support to the prosecution case. Such provisions can, however, be invoked only after the prosecution is able to prove the foundational facts of its case through cogent evidence. The intention of the legislature is that, when such rigid punishments are provided under the NDPS Act, there should be sound safeguards to ensure

that innocent persons are not harassed or unnecessarily detained by any arbitrary or whimsical action of the police authorities.

34. The provisions of a statute have to be interpreted inter alia with reference to the intention of the legislature. A perusal of the provisions of NDPS Act leads no doubt that while the legislature wanted to curb the menace of drug addiction with heavy hand by providing stringent punishment, it was nevertheless conscious of the constitutional requirement that liberty of an individual must not be curtailed and in order to avoid or lessen the possibility of false implication, it provided sound procedural safe guards

35. Admittedly for the consideration of a bail application the Court with a view to analyze the existence of reasonable grounds for presuming whether the accused is involved or not has to rely on the case of the prosecution i.e. the statements of the witnesses and the documents except concerning the witnesses who are recorded at the trial in which the said latter statements are to be considered.

36. The bar imposed by the provisions of Section 37 of the NDPS Act in relation to the offences mentioned in the said Section is in addition to the limitations imposed under the Code/BNSS or any other law for the time being in force on granting of bail.

37. Even if the Court is convinced subject to the final outcome of the trial that a case appears to be made out for considering the non-application of the embargo created under the provisions of Section 37 of the NDPS

Act, yet the Court is required to consider the grant of bail in the light of the general law governing the filed in case of non-bailable offences.

38. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

39. In **"State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447"**, the Hon'ble Apex Court has held, "basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

40. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:

i. The judicial discretion must be exercised with the utmost care and circumspection;

ii. That the Court must duly consider the nature and the circumstances of the case;

iii. Reasonable apprehension of the witnesses being tampered;

iv. Investigation being hampered or

v. The judicial process being impeded or subverted.

vi. The liberty of an individual must be balanced against the larger interests of the society and the State.

vii. The court must weigh in the judicial scales, pros and cons varying from case to case.

viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;

ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;

x. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.

xi. The facts and circumstances of the case play a predominant role.

41. The Hon'ble Apex Court in **"Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 1632"**, referred to the following extract from the American Jurisprudence having bearing on the subject of bail,

"Where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail".

42. It has been laid down by the Hon'ble Supreme Court in **"Sanjay Chandra vs. Central Bureau of Investigation AIR 2012 SC 830"** at Para 14 of its judgment as under: -

"14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary to the concept of personal liberty

enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

43. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon'ble Apex Court cited as **"Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40",** in which the bail was granted to the appellant who was involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference: -

"24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both

under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating of the scales of justice."

"25. The provisions of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual."

44. In **"Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280"**, the Hon'ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference: -

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses

being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

45. The observations of the Hon'ble Apex Court laid down in **"State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21"**, at para 18 of the judgment also deserve a needful mention:

> "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail \[see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)\]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

46. The Hon'ble Apex Court in Sanjay Chandra's case cited supra has inter alia held at para 40 of the judgment, "the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required."

47. The Hon'ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharastra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98**, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has inter alia observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of

any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

48. For the foregoing discussion, the Court is of the opinion that it may meet the ends of justice in case the petitioners/accused namely **1) Mohammad Afshaan Jan S/o. Mohd Ismail Jan and 2) Shabir Ahmad Mir S/o. Ghulam Ahmad Mir both residents of Rawathpora Baghaat Barzulla, Srinagar** are admitted to bail in the instant case FIR bearing No. 18/2022 of Police Station, Batmaloo, subject to furnishing of surety and personal bonds in the amount of Rs. 2 lacs each [the surety bond of 2 lacs to be furnished by two sureties from amongst the near relatives of the petitioners each to be liable in the amount of Rs. One lac] to the satisfaction of the Ld. Trial Court [Special Judge, NDPS Cases, Srinagar] and the Superintendent of the Jail concerned.

This order shall, however, be subject to following conditions:

1) Petitioners/accused shall remain punctual at the trial of the case unless exempted at any hearing by the trial court itself on any justified grounds.
2) The petitioners shall not directly or indirectly make any inducement, threat or coercion to any of the unexamined prosecutions witnesses so as to dissuade them from making their factual averments at the trial.
3) Petitioners shall not repeat the commission of any crime.
4) Petitioners shall not leave the limits of the UT of Jammu and Kashmir without the prior permission of the ld. Trial Court.
5) Petitioners shall fortnightly cause their appearance before the Station House Officers of their territorial Police Stations to portray their subsequent good behavior until the conclusion of the trial.

49. In case the requisite surety bonds are furnished to the satisfaction of the ld. Trial Court and duly attested, a formal release order shall be issued by the ld. Trial Court directing the Superintendent of the Jail concerned in which they are lodged for their release in the instant case after obtaining the requisite personal bond in the amount of Rs. 2 lacs each from them.

50. The ld. Trial Court shall be competent to proceed against the petitioners/accused in terms of provisions of Sections 491 and 492 of the BNSS corresponding to Sections 446, 446A of the Code in the event of violation of any bail conditions

51. It is very needful to mention that nothing in this order shall be construed as any prejudging of or interference with the merits of the case which shall be decided at the conclusion of the trial. The facto legal discussion made in this order has been so made for the limited purpose of the disposal of this bail petition.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
25.11.2026
Shahid Manzoor

Whether the Judgment is speaking? Yes

Whether the judgment is approved for reporting? Yes