

Sr. No.

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

Bail App No. 277/2025

Reserved on: 04.05.2026

Pronounced on: 07.05.2026

Uploaded on: 07.05.2026

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

Shakeela Begum @ Taya

....Petitioner

Through :- Mr. Touqir Mustafa, Advocate.

v.

UT of J&K

.....Respondent

Through :- Mr. Adarsh Bhagat, GA.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Petitioner has invoked Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"] for bail, after her earlier application for the said relief, vide order dated 06.08.2025, came to be rejected by learned Additional Sessions Judge, Doda ["the trial court"].

02. As the prosecution case would unfurl, on 03.01.2025, SPO Kuljeet Singh of Police Post Khellani produced a written report indicating that while he along with other officials was on naka duty at Camp Road NHW- 244 a bus bearing Registration No. JK02CN-0087 on its way from Jammu to Bharderwah, was intercepted for checking. One person alighted from the bus

and attempted to flee towards Khellani. On suspicion, he was chased and apprehended tactfully. When enquired he disclosed his identity as Babar Ahmed Malik. On personal search, a blue-coloured polythene packet containing heroin-like substance (“Chitta”) was recovered and it weighed about 10 grams. The recovered material was seized, sealed and marked in accordance with the procedure in the presence of Executive Magistrate. FIR No. 04/2025 of Police Station, Doda for offences under Sections 8/21/22/29 NDPS Act came to be registered against the said accused.

03. On the disclosure of accused Babar Ahmed Malik, a search warrant was obtained from the competent Court for house search of the petitioner. On 21.01.2025, the investigating Officer along with other police officials including a lady constable, conducted search of petitioner’s residence in the presence of Executive Magistrate. During search, a black coloured polythene packet came to be recovered from beneath a pile of blankets in a shelf. It was found to contain a transparent packet with heroin like substance. The recovered substance was weighted and found to be approximately 06 grams excluding the weight of the polythene. The material was seized, sealed and marked in accordance with the procedure. Personal search of the petitioner was also conducted through a lady official after serving notice under Section 50 of NDPS Act, however, nothing incriminating was found during the search. Petitioner came to be arrested for the alleged commission of offences under Sections 8/21/22/29 NDPS Act. During investigation, Call Detail Records and bank transactions details of accused persons were also collected.

04. It is further case of the prosecution that accused Babar Ahmed Malik during investigation disclosed involvement of the petitioner in procurement and distribution of contraband substances. Petitioner is also stated to be involved in three earlier FIRs under NDPS Act at Police Stations Doda and Assar.

05. The bail application filed by the petitioner came to be rejected by the trial court primarily on the ground of bar contained in Section 37 of NDPS Act.

06. Petitioner has taken exception to the rejection of her bail plea by the trial Court *inter alia* on the grounds that she has been sought to be implicated solely on the basis of alleged confessional statement of accused Babar Ahmed Malik and her statement recorded during investigation under Section 67 NDPS Act while they were in custody, which is inadmissible in evidence as per Hon'ble Supreme Court verdict recorded in **Tofan Singh v. State of Tamil Naidu; (2020) 4 SCC 1**. According to the petitioner, there is no material or evidence to corroborate or substantiate the allegations against her, except aforesaid statements of Section 67. It is also contention of the petitioner that since alleged recovery of 06 grams of heroin from her conscious possession falls within the intermediate category, rigor contained in Section 37 NDPS Act is not applicable. It is emphasised that in matters where Section 37 NDPS Act is not attracted, Court is obliged to revert to the general principles of bail i.e. presumption of innocence and right of personal liberty under Article 21 of Constitution of India as also the necessity to prevent pre-trial detention. According to the petitioner, her bail plea, in view

of facts and circumstances obtaining the case, is required to be examined on the touchstone of general principles governing bail under Section 437 Cr.P.C.

07. Having heard learned counsels for the parties, I have carefully gone through the record.

08. While learned counsel for the petitioner has reiterated the grounds urged in the memo of petition, learned GA has submitted that petitioner was involved in the possession of contraband in such quantity which cannot be said to be meant for personal consumption and was intended for illegal sale thereby affecting society at large. It is therefore, contended that she is not entitled to be enlarged on bail in view of Section 37 NDPS Act.

09. The question that arises for consideration in the present petition is whether petitioner has been able to carve out a case for grant of bail in the light of her criminal antecedents.

10. It is not in dispute that recovery allegedly effected from the petitioner is approximately 06 grams of heroin, which falls within the category of intermediate quantity. However, prosecution case cannot be viewed in isolation of the recovery made from the accused but the material collected during investigation indicating a larger conspiracy. The contention of learned counsel for the petitioner that the case rests solely on the disclosure statement of accused-Babar Ahmed Malik recorded under Section 67 of NDPS Act does not appear to be well-founded. The record reveals that apart from such disclosure, there is recovery of contraband from the residential premises of the petitioner; Call Detail Records (CDRs) suggesting

continuous contact between the petitioner and co-accused; alleged financial transactions consistent with illicit trafficking; and previous involvement of the petitioner in three FIRs viz.

- i. FIR No. 01/2010 u/s 8/20/21/29 NDPS Act of P/S Assar;
- ii. FIR No. 04/2012 u/s 8/20/21/29 NDPS Act of P/S Doda; and
- iii. FIR No. 159/2018 u/s 8/20/21/29 NDPS Act of P/S Doda;

11. The quantity of contraband allegedly recovered from the petitioner, though not falling within the category of commercial quantity, cannot be viewed in isolation, when considered in conjunction with the recovery effected from accused-Babar Ahmed Malik and the material collected during investigation suggesting a conspiracy punishable under Section 29 NDPS Act, which *prima facie* indicates involvement of the petitioner in illicit trafficking. The principles governing grant of bail require the Court to consider the nature and gravity of the offence, antecedents of the accused, and the likelihood of reoffending.

12. Hon'ble Supreme Court in **Deepak Yadav v. State of Uttar Pradesh; (2022) 8 SCC 559** cancelled the bail granted to accused therein on the ground that he had previous criminal antecedents. Following the said verdict, High Court of Chhattisgarh in **Dharmendra Singh v. State of Chhattisgarh; 2026 SCC OnLine Chh 3672** has rejected bail plea of the accused in a case where intermediate quantity of contraband came to be recovered from his conscious possession on the premise that he, being a habitual offender, does not deserve the liberty of bail.

13. What is quite vivid from a perusal of the record is that petitioner is involved in fourth crime under NDPS Act. Having enumerated the facts and analyzed the nature of involvement of the petitioner in four criminal cases, there can be no scintilla of doubt to brand the petitioner a “history sheeter”. Petitioner, in the circumstances, has not been able to satisfy this court that there are reasonable grounds to believe that she is not guilty of the offences alleged nor has she been able to demonstrate that she is not likely to commit any offence while on bail. The menace of drug trafficking has assumed alarming proportions and poses a serious threat to the society, particularly the youth. Courts are, therefore, required to adopt a cautious approach while dealing with such matters.

14. In view of the aforesaid discussion, present application is dismissed.

(Rajesh Sekhri)
Judge

JAMMU
07.05.2026
Paramjeet

Whether the judgment is speaking? Yes/No
Whether the judgment is reportable? Yes/No