



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

Bail App No. 361/2025

Date of pronouncement: 29.04.2026

Date of uploading: 29.04.2026

Salim Khan, Aged 45 years

..... Petitioner(s)/Appellant(s)

S/o Shahzad Khan,

R/o T-175, Gali No. 4,

Gautampuri, Jafrabad, Shadra,

P O Salimpur, District North East

Delhi, New Delhi.

A/p lodged at District Jail Kathua.

Through his son

Sahid, Aged 22 years,

S/o Salim Khan,

R/o T-175, Gali No. 4,

Gautampuri, Jafrabad, Shadra

P O Salimpur,

District North East Delhi,

New Delhi.

Through: Mr. Supreet Singh Johal, Advocate.

vs

01. Union of India through

..... Respondent(s)

Sub-Inspector, Narcotics Control Bureau

(NCB), Jammu Zonal Unit,

Office at H. No. 322,

Sector-C, Sainik Colony,

Jammu.

02.Superintendent, District Jail,

Kathua.

Through: Mr. Vishal Sharma, DSGI.

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

ORDER

29.04.2026

- 01.** Petitioner has approached this Court for his enlargement on bail, after his plea for a similar relief, vide order dated 14.11.2025, came to be



declined by learned Additional Sessions Judge, Kathua [“the trial Court”].

- 02.** Before a closer look at the grounds urged in the petition, it shall be appropriate to have an overview of background facts of the case.
- 03.** Factual matrix of the prosecution case, shorn of verbosity, is that a source information was received by Sh. Shubham Yadav, Sub-Inspector, NCB, Jammu that on 31.08.2024 at about 0600 hours, four parcels booked in the name of Farooq Ahmed Labroo, containing Codeine based cough syrup and Spasmo Proxyvon Plus Capsules were being transported in a truck bearing Registration No. JK13E 9954 from Delhi to Srinagar and vehicle was about to pass State Tax Enforcement Physical Inspection Hall No. 2 Lakhanpur, Kathua, J&K between 1600 hours to 1800 hours. On the receipt of this information the NCB team rushed to the spot and intercepted the truck.
- 04.** As per the prosecution case, driver of the truck disclosed his name as Sh. Nazir Ahmad and Khalashi (the conductor) as Umar Gani Laway. Both of them were requested by NCB to be independent witnesses, to which they agreed. The team asked for bulity of the loaded material.
- 05.** Further case of the prosecution is that in Bulity No. 20512, name of the consigner was written as Verma Electricals and consignee Farooq Ahmed Labroo and “Four electronic goods” was mentioned in the bulity. The team recovered all the four parcels from the truck.
- 06.** According to the prosecution, when parcels were opened one by one, two Jhoomar lights were recovered from the first parcel, green



coloured card box on which “Battery cell” was mentioned was recovered from the second parcel, Sarvo cards were recovered from the third parcel and three black polythenes, 8 boxes in each polythene and sixteen more boxes (total 40 boxes) of Spasmo Proxyvon Plus capsules (containing Tramadol) and 25 bottles of Codeine based cough syrup, wrapped blue and yellow colour polythene came to be recovered from the fourth parcel. The NCB team finalised requisite legal formalities including the seizure and sealing of alleged contraband on the spot.

- 07.** NCB team of Jammu along with NCB, Srinagar reached Star Goods Carrier, Srinagar on 02.09.2024, with whom parcels were booked for transportation. Sh. Irshad Sadiq Runga, who was present in the premises of the company called Asif Ishtiyah, receiver of the parcel. He told him on call that his parcels had reached to their Srinagar godown. He was called to come and collect the parcels. Said Asif Ishtiyah reached Star Goods Carrier, Srinagar at 1500 hours on 02.09.2024 to collect the parcels. After the payment, Irshad Sadiq Runga handed over the receipt and gate pass to Asif Istiyah to collect his parcels from the godown and when Asif Ishtiyah was going towards the godown to collect his parcels, he was intercepted by NCB team and he accepted that said parcels belong to him. On this, Asif Ishtiyah came to be detained by NCB team and the truck bearing Registration No. JK01S 6045, which was used by accused Asif Ishtiyah for smuggling of drugs also came to be seized.



- 08.** Pertinently, accused Asif Ishtiyaq during his statement under Section 67 NDPS Act on 03.09.2024, according to the prosecution revealed that he had ordered the contraband in question from Salim Khan, the petitioner herein, and had paid around Rs. 65000/- to him through his ATM card, that was given to him when he had visited Delhi. The accused Asif Ishtiyaq is also alleged to have disclosed that he along with his friend Zissan Hilal Zargar would sell these drugs in double rates in Srinagar.
- 09.** On this revelation, a notice under Section 67 NDPS Act came to be issued to the petitioner. Statement of the petitioner came to be recorded on 27.10.2024 under Section 67 NDPS Act in which, according to the investigating agency, he disclosed that he had parcelled the seized contraband to Asif Ishtiyaq on 27.08.2024 faking the parcels as electronic items for HA electrics.
- 10.** The investigating agency also recorded statement of Irshad Sadiq Runga under Section 183 BNSS, in which he is alleged to have stated that seized contraband was booked by the petitioner and sent to accused Asif Ishtiyaq on 27.08.2024 and on being asked about bill and ID of receiver, petitioner replied that he would provide the said documents at the time of delivery. The investigating agency also recovered mobile phones of both Asif Ishtiyaq and petitioner and statements of accounts of accused persons from the concerned banks were also obtained by the investigating agency. Aside, the investigating agency also obtained CDRs and CAFs with certificate of



63 of BSA (65B of IEA) from the concerned service providers through Nodal Officer of J&K Circle.

11. The investigation eventually culminated in the presentation of charge sheet in the trial Court.
12. The petitioner and co-accused came to be charged by the trial Court, whereby they pleaded innocence prompting the trial Court to call for the prosecution evidence and so far one prosecution witness is stated to have been examined by the trial Court.
13. The petitioner approached the trial Court for emancipation, however, his bail plea came to be rejected primarily on the grounds of gravity of the charge and bar of Section 37 NDPS Act.
14. The petitioner has taken an exception to the verdict of learned trial Court predominantly on the grounds that contraband was not recovered from his conscious possession, whereas driver and conductor of the truck, from which the contraband came to be recovered have been cited as prosecution witnesses. It is also contention of the petitioner that he is neither the consigner nor the consignee of the contraband and therefore there is no *prima facie* evidence suggesting his involvement in the crime.
15. The plea has been opposed on the other side by the respondent *inter alia* on the grounds of seriousness of the charge and severity of the punishment attached to it. It is also contention of the respondent that since a commercial quantity of contraband came to be recovered in the present case and petitioner has been charged *inter alia* for offence



under Section 29 NDPS Act, Section 37 NDPS is attracted and he is not entitled to the liberty.

16. Having heard learned counsels for the parties, I have gone through the record.
17. While learned counsel for the petitioner has reiterated the grounds urged in the memo of petition, Mr. Vishal Sharma, learned DSGI has opposed the present application on the ground of rigor of Section 37 NDPS Act.
18. The courts while considering a bail plea, in cases of recovery of commercial quantity of contrabands in NDPS cases, are mandatorily required to return a finding, in the context of Section 37 of NDPS Act that accused is not guilty of any such offence.
19. Undisputed facts of the case are that petitioner came to be implicated in the present case, solely on the basis of statement made by co-accused Asif Ishtiyaq, while he was in custody, that he had ordered the consignment from the petitioner and paid him Rs. 65000/- from his ATM card.
20. A three Judge Bench of Hon'ble Supreme Court, in **Tofan Singh Vs. State of Tamil Nadu; (2021) 4 SCC 1**, has held that since the officers vested with the power under Section 53 of NDPS Act are "Police Officers", any confessional statement recorded by them under Section 67 NDPS Act will remain inadmissible under Section 25 of the Evidence Act and cannot be taken into consideration to convict an accused under the Act.



Relevant excerpt of the judgement, reads as below:

“158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provision of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2 That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

21. Relying upon the majority judgment in **Tofan Singh** (supra) Hon’ble Supreme Court in **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and Anr.; 2022 (1) RCR (Criminal) 762** though ruled that CDR details of an accused is an aspect to be examined during the trial, but refused to cancel bail of the accused, granted by the high Court on the ground that contraband was not recovered from their conscious possession.

Relevant excerpt of the judgment captured in paras 9 and 10 for the facility of reference has been extracted below:

“9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

*10. It has been held in clear terms in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1**, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the*



confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Cri.) No. 22702/2020, SLP (Cri.) No. 1454/2021, SLP (Cri.) No. 1465/2021, SLP (Cri.) No. 1773-74/2021 and SLP (Cri.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

22. It is manifest from the afore-quoted enunciation of law by Hon'ble Supreme Court that an accused can be granted the concession of regular bail when he is sought to be implicated solely on the basis of the disclosure statement of co-accused, recorded in custody, and there is no other corroborative evidence or substantial material available with the prosecution to connect him with the allegations of drug peddling.
23. In so far as CDRs/CAFs and tower locations are concerned, in the absence of transcript of conversations exchanged between accused persons, mere call details or call data records or mere contact of the petitioner with co-accused cannot be considered to be a corroborative material to connect him with the commission of the crime. It may reveal that in or around the time of the occurrence petitioner was in contact with the co-accused, receiver of the alleged contraband, however, since there is no transcript of the conversations between accused persons, call details *per se* would not be sufficient to



corroborate that they had common criminal intention of drug peddling.

24. The positive case of the prosecution is that NCB received a source information that four parcels booked in the name of Farooq Ahmed Labroo containing the contraband in question were being transported from Delhi to Srinagar. The vehicle came to be intercepted at Lakhanpur. As per the Bilty No. 20512 presented by the driver of the truck, consigner of the truck was Verma Electricals and consignee was Farooq Ahmed Labroo. The consignment was booked with the Star Goods Carrier, Srinagar and Asif Ishtiyaq received the parcel from godown of the said company. It is manifest from the sequence of these events, part and parcel of the charge sheet that petitioner is neither the consigner nor the consignee nor receiver of the parcel containing the alleged contraband. In short, the contraband has not been recovered from the conscious possession of the petitioner and he came to be implicated in the case solely on the basis of statement made by the co-accused Asif Ishtiyaq under Section 67 NDPS Act, while he was in custody, which has per the legal precedents discussed in the preceding paras is inadmissible in evidence. In the circumstances of the case, the embargo contained in Section 37 NDPS Act cannot be construed to have the same efficacy.
25. For the foregoing reasons, petition is allowed and petitioner is directed to be released on bail on his furnishing a solvent surety bond to the tune of Rs. one lac, to the satisfaction of learned trial Court and



a bond of personal recognizance to the satisfaction of Superintendent of the concerned jail, subject, however to the conditions that:

- (i) he shall not jump over bail and tamper the prosecution evidence;
- (ii) he shall not leave territorial jurisdiction of the trial court without prior permission;
- (iii) he shall not commit an offence similar to the offence he is accused of; and
- (iv) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the trial Court.

26. It is however made clear that nothing observed in this order shall be construed as an expression of opinion on the merits of the case.

27. **Disposed of.**

(Rajesh Sekhri)
Judge

Jammu
29.04.2026
Sushant

Whether the order is speaking?	Yes
Whether the order is reportable?	Yes