

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Pronounced on : 07.04.2025

Bail App No. 261/2024

Abdul Hamid

.... Petitioner/Appellant(s)

Through:- Mr. N. D. Qazi, Advocate

V/s

Union Territory of J&K & anr.

.....Respondent(s)

Through:- Mr. Sumeet Bhatia, GA

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The applicant has preferred this application under Section 483 of BNSS, 2023 for grant of bail in FIR No. 212/2024 dated 17.09.2024 registered by the SHO Police Station, Rehmbal/respondent No. 2, for the offences under Sections 8/21/22 NDPS Act.

02. As per prosecution story, the police party was deployed at Tikri to perform Naka security checking and during checking at about 2205 hours, one car bearing Registration No. JK02DH-2486, which was coming from Jammu and going towards Srinagar, was stopped for checking. On questioning, the driver of the car disclosed his identity as Mukhtar Ahmed S/o Mohd. Rashid R/o Karmara, Poonch whereas the person on the co-passenger seat disclosed his identity as Mohd. Hafiz S/o Mohd. Hussain R/o W. No. 10 Jhulass Poonch and the person sitting in the rear seat as Abdul Hamid S/o Mohd. Hussain R/o W. No. 10, Jhulass Poonch. The police party subjected them for physical frisking and during personal

search of Abdul Hamid, one transparent polypack, the contraband containing banned Heroin like narcotic substance was recovered from the front right pocket of his jeans along with aadhar Card which was weighed and found to be 104.89 gms. On the personal search of Mukhtar Ahmed, one transparent polypack containing banned Heroin like narcotic substance was recovered from the front right pocket of his jean along with his Aadhar Card which was weighed and found to be 106.86 gms.

03. FIR No. 212/2024 dated 17.09.2024 against the applicant for the commission of offences under Sections 8/21/22 NDPS Act was registered at Police Station Rehmbal and during the investigation, offence under Section 29 of the NDPS Act was also added.

04. The applicant filed an application for grant of bail before the Court of learned Additional Sessions Judge (Special Judge under NDPS Act) Udhampur which was dismissed vide order dated 28.10.2024, by holding that the investigation is still going on and the accused cannot be released at this stage when the offences allegedly committed by him are of heinous and serious in nature.

05. During the pendency of this case, investigation is complete and charge-sheet has been presented.

06. The contention of learned counsel for the applicant is that the applicant was found in possession of contraband (Heroin) which is of intermediate quantity, as such, rigours of Section 37 of NDPS Act are not attracted. The applicant is in custody since his arrest and investigation is complete, therefore, his custody is not required.

07. It is further submitted that the applicant has been falsely implicated in the aforementioned FIR, the alleged recovery of contraband from him is intermediate quantity, as such, the rigours of Section 37 of NDPS Act do not apply to this case of the applicant, therefore, there is no bar in granting bail to him.

08. Applicant submits that the contraband seized from the applicant was from his individual capacity and from perusal of the FIR, it appears that the total contraband seized from the applicant is 104.89 gms, is not of commercial quantity. It is well settled that the recovery of contraband from the personal search of the applicant as well as co-accused should be considered separately.

09. The respondents have objected to the grant of bail on the ground that the quantity of narcotics seized in the said FIR falls within the ambit of commercial quantity. All the accused persons were in connivance with each other for illegal trade and supply of banned Heroin substance which they have procured by illegal means. It is submitted that the offences committed by the applicant are heinous and serious in nature, therefore, it is necessary to keep the applicant in jail as the offences are committed by the applicant against the society.

10. Learned counsel for the applicant has cited ruling of the Hon'ble High Court of Bombay in case titled **Rashida Iqbal Khan Vs. State of Maharashtra (Criminal Application No. 2177/2006 dated 21.06.2006)** as another ruling of the Bombay High Court in case titled **Sagar Nana Borkar vs. State of Maharashtra (Criminal Bail Application No.**

3636/2022, dated 15.09.2023) and Sajjad Ahmed vs. Union Territory of J&K & ors. in B.A. No. 276/2020 decided on 23.02.2021.

11. The applicant was travelling along with co-accused and from the personal search of the applicant-Abdul Hamid, one transparent polypack containing banned heroin weighing 104.89 gms (excluding material) was recovered from the front right pocket of his jeans and from the personal search of the Mukhtar Ahmed, one transparent polypack containing banned heroin weighing 106.86 gms (excluding material) was recovered from the front right pocket of his jeans.

12. Though the applicant was found together in the said vehicle, but the contraband was found from his possession individually, therefore, the judgment of Hon'ble Apex Court in **Amarsingh Ramjibhai Barot vs. State of Gujarat** reported as **2005(7) SCC 550**, for the purpose of considering this bail application is applicable at this stage, wherein the Hon'ble Apex Court has observed as under:-

“8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.”

13. The case of the prosecution is that quantity of contraband recovered from all the accused persons falls within the meaning of

commercial quantity. The fact that all the accused persons apprehended by the Investigating Agency were having common intention has to be established during the course of trial. At this stage, the applicant was only carrying the contraband of intermediate quantity.

14. The contraband found from the possession of the applicant is less than commercial quantity, as such, this Court is of the considered view that embargo of Section 37 of NDPS Act, would not be applicable in this case. It is settled that with regard to intermediate and small quantity, the consideration for grant of bail is under that principles govern under Section 437 of Cr.P.C. Furthermore, the applicants have been detained for the last more than six months and charge-sheet has been presented, this Court is of considered opinion that they are entitled to get bail in this case. The applicant is in custody since 18.09.2024, the investigation is complete, charge-sheet is presented, the applicant is not required for purposes of investigation. Learned counsel has placed on record the judgments in which bail has been granted.

15. In view of the aforesaid facts and circumstances of the case, the applicants namely Abdul Hamid is admitted to bail subject to the following conditions:-

- (i) The applicant shall furnish personal bond to the tune of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of the Trial Court;
- (ii) The applicant shall cooperate in the remaining part of the trial and shall appear before the Trial Court as and when so directed by the Trial Court without fail;

- (iii) The applicant shall not leave the territorial jurisdiction of UT of J&K without prior permission from the Trial Court;
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses or any other person/persons, who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts during the trial;
- (v) The applicant shall not indulge in any offence similar to that with which he is charged with in the instant case.

16. With these observations, the instant bail application is **disposed of.**

JAMMU
RAM MURTI/PS
07.04.2025



(SINDHU SHARMA)
Judge