

COURT OF ADDITIONAL SESSIONS JUDGE KATHUA

File No. : /Bail
Date of Institution : 05.05.2026
Date of Order : 30.05.2026

Bagh Shah Age 29 years S/O Yousaf Shah R/O Village Karandi Kalan, Tehsil Marheen and Distt. Kathua.

...Applicant

Through: Mr. Tarun Gupta

Vs

UT of J&K through SHO P/S Billawar

...Non-Applicant

Through: Ms. Gurpreet Kour

FIR No 55/2026 of Police Station Billawar

Offences u/s 8/21/22/29 NDPS Act

In the matter of :- Application for grant of bail in favour of the applicants.

Coram :-

Pravin Pandoh
JO Code: JK00157

ORDER

1. By virtue of application in hand, applicant named above has sought the indulgence of this court for enlarging him on bail in the above referred case inter alia on the ground that he is innocent person and has not committed any offence but police of police station Billawar have registered a false and frivolous case against him for the commission of an offence under NDPS Act and have arrested him. That there is no legal bar in grant of bail to the applicant as intermediate quantity of narcotic has been alleged to be recovered from the applicant, as such he is entitled for bail. That the investigation of the case is complete and applicant is no more required for further investigation of the case. That the applicant is ready to furnish bail bonds to the satisfaction of this court and undertakes to face the trial. He also undertakes not to tamper with prosecution evidence and shall not jump over the bail. Prayer has been made for grant of bail in favour of the applicant.
2. Pursuant to the filing of the present application, report from the concerned police has been called and Id. APP was also directed to file objections to the present application.

3. As per police report, on 03.04.2026 an information was received through reliable source at police station that three persons namely Dharam Singh S/O Nek Ram R/O Aglidhar Tehsil Ramkot District Kathuav , (ii) Aftab S/O Nazir Ahmed R/O Pouni Reasi and (iii) Rakesh Kumar S/O Girdhari Lal R/O Aglidhar Tehsil Ramkot District Kathua are indulged in smuggling/selling of Heroin like contraband substance and the above said persons are coming from Mandli towards Billawar in a vehicle motorcycle bearing registration no. JK08Q /7577 for selling Heroin like substance among the local people of the locality. On the basis of the said information, a case under FIR No. 55/2026 u/s 8/21/22/29 NDPS Act was registered at Police Station Billawar and investigation was entrusted to PSI Kanav Verma CEC/246555 who alongwith other officials visited the spot and laid a naka near Govt. Degree College Dewal, Billawar. During naka checking, one vehicle bearing registration no. JK08Q/7577 came from Mandli towards Billawar. On noticing the police party, they became frightened and attempted to flee from the spot but were promptly apprehended by the police officials present at the naka. On inquiry the said persons disclosed their names as Dharam Singh S/O Nek Ram R/O Aglidhar Tehsil Ramkot District Kathua, Aftab S/O Nazir Ahmed R/O Pouni Reasi and Rakesh Kumar S/O Girdhari Lal R/O Aglidhar Tehsil Ramkot District Kathua. HC Babu Ram of P/S Billawar conducted the personal search of the accused persons, three transparent whitish coloured polythene packet containing heron like substance (Chitta) was recovered from the left front pocket of their pant, and three smartpone and one keypad phone was recovered from the right front pocket of their pant. During the search of the accused persons recovered and seized total weight came out to 12.37 grams of Heroin like substance kept in polythene from the same. During the further investigation, I.O also arrested accused namely Bagh Shah S/O Yousaf Shah R/O Karandi Kallan Tehsil Marheen District Kathua as per the backward linkage in the case. The accused person Bagh Shah was taken into custody who is presently lodged at District Jail Kathua.
4. APP controverted the present bail application by filing objections in the same stating therein that the accused have been found in possession of narcotic substance which they were not legally entitled to possess and thus deserve no leniency in terms of bail. That the accused persons have committed the offences against the society as drug trafficking is not just an offence against the individual but against the entire society and further while going through preamble of NDPS Act, accused persons are involved in offence under NDPS Act and are required to be dealt with iron hands. That the contrabands drugs recovered from the possession of accused falls in intermediate quantity and punishment prescribed is

rigorous imprisonment for a term which may extend to 10 years and fine which may extend to Rs. One Lakh thus making it a serious non-bailable offence, as such, deserves no leniency in terms of bail. The Hon'ble Apex Court in multiple decisions has held that bail in such cases must be refused to deter this organized crime. That the offences under NDPS Act have direct bearing on the public health, law and order and even the intermediate quantity causes grave societal harm particularly among the youth. That in the present case applicant/accused has failed to show any exceptional or mitigating circumstances warranting indulgence of this court at this pre-mature stage. As such, the present bail application deserves outright dismissal. Prayer has been made for rejection of the bail application.

5. Heard the rival arguments and also perused the necessary record indispensable for the just disposal of this bail application.
6. Ld. Counsel for the applicant/accused has submitted that the accused is innocent and is not involved in commission of any offence and he has falsely been dragged in the case. On the contrary, Ld. APP has argued that the accused is involved in heinous and non-bailable offence under NDPS Act, as such, bail may not be granted to him and prayed for rejection of the bail application.
7. The accused has reportedly been caught by the police in a case involving 12.37 grams Heroin like narcotic substance, which comes within the purview of intermediate quantity as per table/notification appended with the NDPS Act in terms of Sub clause vii(a) and xxiii(a) of Section 2 of the NDPS Act.
8. Section 37 NDPS Act, prohibits the bail to a person/accused for offence punishable u/s 9, 24, 27-A NDPS Act and all the offences involving commercial quantity of contraband, the aforesaid section does not apply to this case for consideration of bail to the accused in custody, as such the present application is to be considered in view of provision for bail contained in Code of Criminal Procedure.
9. In support of his objections, Id. APP has placed reliance on a judgment passed by Hon'ble High Court of Meghalaya, titled, "**Smt. Rupa Gurung Vs State of Meghalaya B.A No. 60 of 2023**" wherein the bail plea of the accused was rejected on the grounds that the accused was prima facie involved under section 21(b) NDPS Act (intermediate quantity).

10. In support of his objections, Id. APP has placed reliance on a judgment passed by Hon'ble High Court of Meghalaya, titled, **"Smt. Rupa Gurung Vs State of Meghalaya B.A No. 60 of 2023"** wherein the bail plea of the accused was rejected on the grounds that the accused was prima facie involved under section 21(b) NDPS Act (intermediate quantity).

11. However, Hon'ble High Court of Jammu & Kashmir And Ladakh in case titled, **"Abdul Hamid Vs Union of Territory of J&K & Anr,** while allowing a bail application No. 261/2024 has held as under :-

14. The contraband found from the possession of the applicant are 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.

12. Furthermore, in the case cited 2005 AIR (Crl.) Page 607, it has been held.

"It cannot be lost sight of ultimate objective of every legal system is to arrive at truth, punish the guilt and protect the innocent. There is no scope for any pre-conceived notion or view for grant or refusal of the bail, discretion vested with the court is to be exercised on sound judicial principles".

(ii) Similarly, in the case titled **"Tariq Ahmed Dar & Anr. Vs. State," 2008(3) JKJ, 410(HC) para-7,** it is held :-

"The prolonged incarceration unless justified cannot be permitted. The detention or custody cannot be by way of punishment. Continuous incarceration in the fact and circumstances of the case may amount to sentence the accused before conviction. After all in criminal jurisprudence, the accused is presumed to be innocent, until his guilt is proved. This cherished principle cannot be ignored.

It is fact that narcotic drugs have the effect of polluting social environment. The offences are required to be dealt with Iron hands i.e. to say, if the charge is proved exemplary punishment can be awarded. While viewing the object of section 497 Cr.P.C, grant of bail in the given circumstances cannot be withheld especially when the restraint clause is not applicable. Accused deserves to be admitted to bail".

13. The accused/applicant herein has been arrested on 03.04.2026 and is in judicial custody till date. The contraband allegedly recovered from the accused falls under intermediate quantity which carries punishment for imprisonment of ten years as such rigor of section 37 NDPS Act does not attract.

14. The bail cannot be withheld as a measure of punishment and in this regard law is well settled and in considering bail of accused the court has to struck a balance

regarding unreasonable curtailments of liberty and other factors governing bail as discussed herein above. As such, present accused is entitled for grant of bail.

15. Accordingly, keeping in view the discussion made herein above, the applicant is allowed and applicant is admitted to the bail on his furnishing bail bond to the tune of Rs. 50,000/- and personal bond of the like amount before Superintendent District Jail Kathua, failing which he shall be kept in judicial custody till further orders. The bail is subject to the following terms & conditions:-

- (i) That applicant/accused shall appear before the court or L.O as and when directed without failure;
- (ii) That the applicant shall not repeat such offence during the bail period;
- (iii) That he shall not hamper/temper the prosecution evidence in any manner or jump over the bail;

In case of breach of any of the condition of the bail order, the prosecution shall have the liberty to seek cancellation of the bail in accordance with the law. Applicant is ordered to be released on bail, if he is not required in any other case.

16. Application in hand is disposed off. Be consigned to records after due compilation.

Announced
30.05.2026

(Pravin Pandoh)
Additional Sessions Judge
Kathua