

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE  
(SPECIAL JUDGE UNDER NDPS CASES) UDHAMPUR**

**Present : Y. P Sharma  
J. O Code: JK00124**

File No: 42/2026

CNR No: JKUD010001192026

Date of Institution : 11.02.2026

Date of Decision : 28.03.2026

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1. Muheeb Maqbool Mir s/o Mohd Maqbool Mir r/o Rangpora Illahi Bagh Srinagar.
  2. Aijaz Ahmad Dar s/o Abdul Rashid Dar r/o Gulabh Srinagar.  
.... Petitioners.

Versus

UT of J&K through Police Post Tikri (P/S Rehmbal).

...Respondent.

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In the matter of : Application for grant of bail in FIR No. 28/2026 under  
Section 8/21/22 NDPS Act.

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**Appearing counsel/s:**

Mr. Mohd Rafiq Mir Advocate for petitioners.

Mr. Hemanshu Prakash, Ld. APP for UT.

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**ORDER**

1. Petitioners Muheeb Maqbool Mir and Aijaz Ahmad Dar by means of present application are seeking their release on bail on various conventional grounds such as; they are innocent, have not committed any offence, they have having movable and immovable properties in the UT, they are young persons and lone male member of their family & their family are dependent upon them, they enjoys good reputation having no criminal back-ground, never prosecuted by any law enforcing agency, as such be released on bail on any terms and conditions.
2. Consequent to the application police report was obtained and thereafter Ld. APP was directed to file objections. Police report and objections are part of the record, the same shall be referred after hearing arguments of Ld. counsel for the parties. Ld. counsel for the petitioners in his argument after referring to the plea in the application argued that it is a case pertaining to non-commercial quantity. Ld. Counsel refer's to the police report and next argued that mere pendency of two cases against the petitioner Aijaz Ahmed is no ground to refuse his bail. On this point he relies upon the law laid down by **Himachal Pradesh High Court in the case of Jeet Ram V State of Himachal Pradesh delivered on 12.08.2025**. The relevant law laid down regarding previous FIR i.e head note A and B being relevant would read as under:

(A) Bharatiya Nagarik Suraksha Sanhita, 2023, Section 483- Narcotic Drugs and Psychotropic Substances Act – Sections 15, 20, 29 – Bail application- Applicant sought release on bail claiming innocence and citing the non-applicability of rigors of Section 37, declaring the recovered contraband does not constitute commercial quantity. (Paras 1-3,9)

(B) Bail considerations- The court emphasized that pre-trial detention should not serve as punishment and that applicants may not be denied bail merely due to previous FIRs unless they lead to convictions. (Paras 12-14).

3. Ld. Counsel also relied upon law laid down by our **Hon'ble High Court in the case of Rashpal Singh Vs UT of J&K & Ors.** On 29.07.2025 where the trial court rejected the bail plea in a case where accused had previous three cases but the Hon'ble High Court granted the bail to the accused/petitioner after discussing the law laid down by Hon'ble Apex Court and other Courts.
4. Ld. APP on the other hand, argued that it is a case where investigation is at initial stage and such type of offences have direct impact on society at large, granting bail at this stage would send a wrong signal. Ld. APP referred to his other objections, to oppose the application such as that the persons dealing in Narcotics are causing deadly impact on the society, drug trade is destroying the young generation i.e future of the nation, there is possibility of applicant jump over bail and influence the witnesses, the backward and forward links are being ascertained, the grant of bail at this stage would encourage likeminded people etc, the repeater who is involved in similar cases repeatedly does not deserve bail as per law laid down by **Hon'ble Apex Court** in case of **State of Jharkhand Vs Sunny Kumar** hence prayed for rejection of bail.
5. **I have heard learned counsel for the petitioner as well as Ld. APP and perused the record and also CD file.**
6. The jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail.
  - (a) *The nature of accusation and the severity of punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
  - (b) *Reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*

- (c) Reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his absconding;
  - (d) Character behaviour and standing of the accused and the circumstances which are peculiar to the accused;
  - (e) Larger interest of the public or the State and similar other considerations;
7. The judicial discretion to grant bail has to be exercised judicially and not in an arbitrary manner and in this regard law is well settled but the court has to consider the facts, circumstances of each case and on its own merit. Hon'ble Apex Court in the case of Sanjay Chandra reported in 2012(I SCC Page 40) has laid down the principles for grant of bail in para 21 of the judgment by holding that bail ought not be denied to teach a lesson to a person whose charges yet to be proved and it has been further held that conditional bond would be a solution. The para 21 would read as under:
- “In bail applicants, 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 preventative. Deprivation of liberty must be considered a punishment, unless it is 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 begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty”*
8. As per the police report petitioners stand arrested on 05.02.2026 and on the said date the petitioners were found travelling in Innova Taxi Car bearing registration No. JK01AX-8411 which was coming from Jammu side and was going towards Srinagar side and it was intercepted for routine traffic checking. The vehicle was being driven by the petitioner No. 1 Muheeb Maqbool Mir and co-passenger disclosed his name as Aijaz Ahmed Dar i.e petitioner No. 2. Whereas during personal search of the petitioner No. 1 Muheeb Maqbool Mir net weight of 7.01 grams of banned contraband heroin like substance was recovered and net weight of 7.13 grams of contraband heroin like substance was recovered from the possession of Aijaz Ahmed Dar. As such, FIR was registered and investigation commenced. Further investigation was carried and as per IO the petitioner Aijaz Ahmed Dar is involved in following cases:
- 1/ FIR No. 23/2022 u/Sec 8/20/29 NDPS Act.
  - 2/ FIR No. 30/2025 u/Sec 8/21/22 NDPS Act.

During proceedings IO of the case SI Ankush Manhas caused appearance with the CD file on 24.03.2026 and submitted that the investigation has been completed and file is pending for approval with the Senior Officers and challan shall be produced within one week.

9. The Ld. APP in his detailed objections has referred to the facts of the case as stated in the police report. It is stated that total recovery from the petitioners is of 14.14 gms, the petitioner No.1 is repeater habitual offender already involved in two cases who has violated the terms and conditions imposed by concerned court while admitting him to bail. Therefore, he cannot be admitted to bail as he has criminal record and habitual in dealing with the narcotics. Ld. APP has taken other routine objections, such as offence being against the public at large and young generation in particular and such offences are spoiling the health and wealth of the youth. Ld. APP also taken other routine objections to oppose the bail and has referred to the law laid down by **Hon'ble Supreme Court** in the case of **State of Jharkhan Vs Sunny Kumar** whereby Hon'ble Apex Court refused the bail plea where the accused was found having repeatedly involved in similar cases.
10. So far as petitioner No.1 Muheeb Maqbool Mir is concerned he is first time offender and involved in a case involving the recovery of non-commercial quantity and petitioner No. 2 Aijaz Ahmed Dar who is found involved in two other cases is concerned.
11. Admittedly, it is a case of recovery of Narcotic Substance which is not at all commercial quantity as per notification issued under the Act, specifying small/commercial quantity as the recovered contraband is below commercial quantity, therefore, the, offences attributable to the petitioners are punishable with imprisonment not exceeding 10 years and to such a case the rigour of Section 37 of the NDPS Act does not apply. Similarly, the bar contained in Section 437 Cr. PC/480 BNSS also does not apply to the case at hand and there is no evidence from I.O. that petitioners were selling the narcotic to someone when apprehended.
12. In the case at hand, the investigation of the case is almost complete as only challan is to be presented before the Court and the petitioners are in judicial custody, whereas the perusal of record shows previous involvement of petitioner No. 2 in **FIR No. 23/2022 u/section 8/20/22 NDPS Act of Police Station, Zakoora and FIR No. 30/2025 u/S 8/21/22 NDPS Act of P/S Zadibal** are pending but the petitioner No.2 as per record has not been previously convicted in any case whereas Ld. APP has raised argument that a repeated offender who is on bail and once again apprehended cannot be granted bail. However, such a plea was previously raised by prosecution/APP in the bail application of **'Rashpal Singh Vs UT of J&K'** and the Court of Special Judge NDPS Court, Jammu (Presided over by the present officer Y. P. Sharma) vide order dated 19.05.2025 rejected the bail plea finding accused Rashpal Singh involved in multiple cases after placing reliance upon **2025 (2) Supreme 388 'State of Jharkhand Vs Sunny Kumar Sao'**. But the said order had been challenged before our Hon'ble High Court where Hon'ble High Court granted bail to the said accused vide judgment delivered in bail application 151/2025 on 29.07.2025 by making

relevant observation regarding criminal antecedents in para no. 15, the same being relevant is reproduced herein under:

**15. The seriousness of charge and criminal antecedents of an individual are no doubt relevant considerations while considering a bail plea, but if it is reckoned as the only test or factor, it may tantamount to imbalancing the constitutional rights and would rather be recalibration of the scales of justice. Since investigation has already culminated in a charge-sheet against the applicant and co-accused in the trial court and he is behind the bars since 08.04.2025 i.e. for more than three and a half months and all the witnesses cited in the charge-sheet are police officials, no fruitful purpose shall be served with continued incarceration of the applicant.**

13. Even Hon'ble High Court of H.P. in case titled '**Sunny Kapoor @ Honey vs State of H.P.**' on 1 January, 2021 and Hon'ble Punjab and Haryana High Court in case titled '**Sahib Singh alias Sahiba vs State of Punjab**' dated 21 April, 2025 laid down the principle to grant bail. Furthermore on this point Hon'ble Karnataka High Court in case titled '**Mahesh Fakir Koti vs State of Karnataka**' dated 14 February, 2025 in a similar situation where petitioner had two more cases under NDPS Act granted bail after relying upon Hon'ble Supreme Court law laid down in the case of '**Prabhakar Tewari vs. State of UP**' reported in (2020) 11 SCC 648. The relevant part of para 3 would read as under:

3. It was submitted, though prosecution had relied upon antecedents of petitioners by stating that accused no. 1 had two cases also under NDPS Act and accused no. 2 had one similar offence. It was submitted, Hon'ble Supreme Court in case of Prabhakar Tewari vs. State of UP reported in (2020) 11 SCC 648, held mere antecedents would not be a good ground for rejection of bail. It was submitted, learned District Judge dismissed application solely on said reasons. It was submitted, since petitioners were permanent residents having movable and immovable properties and as charge-sheet was filed, they are not required for custodial interrogation and therefore, sought for grant of bail.

14. The Hon'ble High Court of Punjab and Haryana on 03.10.2023 in a similar case titled 'Ram Chander vs State of Haryana' granted bail to a repeater offender. Even Hon'ble High Court of Himachal Pradesh in a recent judgment delivered on 12.08.2025 in the case of **Jeet Ram Vs State of Himachal Pradesh reported in 2025 supreme (Online) (HP) page 6995.** The relevant head note A and B would read as under:

*(A) Bharatiya Nagarik Suraksha Sanhita, 2023,  
Section 483- Narcotic Drugs and Psychotropic  
Substances Act – Sections 15, 20, 29 – Bail*

*application- Applicant sought release on bail claiming innocence and citing the non-applicability of rigors of Section 37, declaring the recovered contraband does not constitute commercial quantity. (Paras 1-3,9)*

*(B) Bail considerations- The court emphasized that pre-trial detention should not serve as punishment and that applicants may not be denied bail merely due to previous FIRs unless they lead to convictions. (Paras 12-14).*

15. In the light of above law more particularly the latest law laid down by our Hon'ble High Court on 29.07.2025 '**Rashpal Singh Vs UT of J&K**' after refusal of bail by the Special Judge NDPS Court, Jammu, the Court again on same ground cannot refuse bail of the petitioner No.2 on the ground of pendency of cases against him. However, it is made clear that in case there is a condition of last bail order of the court concerned for not to repeat the offence, then Ld. APP/prosecution may apply to the court concerned for cancellation of bail granted by the said Court.
16. Since, it is a case involving recovery of Narcotic Substance which is not at all commercial quantity as per notification issued under the Act, as the offences are punishable with imprisonment not exceeding 10 years and to such a case, the rigour of Section 37 of the NDPS Act as well as bar contained in Section 437 Cr PC/480 BNSS also does not apply and it is a case of simple recovery of Narcotic/Psychotropic Substance and petitioners are in judicial custody who have to face trial, and as per settled law bail cannot be withheld as a measure of punishment.
17. The plea of the prosecution to reject bail as offence is against society and there is possibility of applicants to jump over the bail or tamper with evidence is without any basis. The other ground about offence being against general public and young generation in particular and against public sentiments, the same cannot be the sole reason to reject the bail in view of the law laid down by our Hon'ble High Court of J&K and Ladakh in the case of **Mushtaq Ahmed Bujard Vs UT of J&K holding that The discretion regarding grant or refusal of bail cannot be exercised against the petitioner on the basis of public sentiments or to teach him a lesson as his guilt is yet to be proved.**"
18. Again our Hon'ble High Court in **Gh. Jeelani Bhat Versus UT of J&K & Anr. on 12.05.2022** laid down law about declining of bail on the plea of prosecution by the trial court on the ground of '**that the offences alleged to have been committed by the petitioner are serious in nature and the same affect the society in general and the young generation in particular, cannot be the sole reason for rejection of the bail application particularly when the allegations are yet to be established. Allowing the petitioner to**



**remain in custody because of the reason that the offences alleged to have been committed by him are serious in nature would amount to inflicting pre-trial punishment upon them. Every person is presumed to be innocent unless duly tried and duly found guilty. Withholding of bail cannot be as a measure of punishment. The petitioner is in custody for more than four months now and his further incarceration will be nothing but imposition of punishment without trial of the case. Therefore, a balanced view of the matter is required to be taken by enlarging the petitioner on bail.**

19. The arguments of Ld. APP to decline bail as there is possibility of accused to flee from justice is also without any foundation because the petitioners are residents of UT of J&K and they can be bound down to appear regularly before the court by imposing sufficient conditions so as to dispel the unfounded apprehension of the prosecution. The petitioners have already spent **more than one month** in custody and **are** now in judicial lockup. Whereas the Hon'ble Apex Court in various pronouncements including guidelines laid down in the case of **Satinder Kumar Antil (2022 (10) SCC page 51) and further subsequent different orders** in order to avoid the over-crowding of the jails has laid down guidelines for release of accused persons/ under-trial prisoners where charge sheet stands filed/investigation is completed and the offences are not the one where bail is to be withheld or there is legal bar to grant bail. Moreover, the allegations are yet to be established during the trial and allowing the petitioner to remain in judicial custody for the reason that offences are serious in nature would amount to pre-trial detention as every person is presumed to be innocent unless duly tried and found guilty in a trial before the competent court of law and even otherwise bail is a rule.
20. Accordingly in view of discussions made herein above, as well as considering all the facts and circumstances of the case and the fact that offence allegedly committed does not exceed punishment of 10 years, the petitioners in the considered opinion of the court deserve judicial discretion of bail, therefore, they are ordered to be released on bail subject to their furnishing bail bonds of Rs. one lac each with two sureties and personal bond of the like amount to the satisfaction of Superintendent Jail concerned, subject to observing following conditions:
- a. That the petitioners shall appear before the Court regularly and shall surrender their passport if any before I.O. and any attempt by the petitioners to delay the trial would be a valid ground to cancel their bail owing to their counsel's absence.**
  - b. That they shall not hamper or tamper with the prosecution evidence by any means including inducement, threat or promises to any person acquainted with the facts of the case so as to**

dissuade them from disclosing such facts to the I.O and Court and

- c. That the petitioners shall not leave the territorial jurisdiction of U.T of J&K without prior permission of the court and shall not switch off their cell phones so as to find their location at all times nor shall change their address without prior permission of court.
- d. That petitioners shall not repeat the offence or indulged in any criminal activity/similar like offences and in case petitioners are found involved again in similar offences, their bail shall be liable to be cancelled.
- e. In case of breach of any of the condition or in case of change of circumstances, the prosecution shall be at liberty to seek cancellation of bail in accordance with law.

21. With this order the application is accordingly disposed of and the petitioner who is in custody since **05.02.2026** be set at liberty forthwith if not required in any other criminal case. The application shall be made part of main file after due compilation.

**Announced:**  
**28.03.2026**

**(Y. P. Sharma)**  
**Addl. Sessions Judge Udhampur**  
**(Spl. Judge under NDPS cases)**