

# Manzoor Ahmad Dar Th. Zakir Ahmed Bhat vs Ut Of J&K And Anr on 31 May, 2022

**Author: Javed Iqbal Wani**

**Bench: Javed Iqbal Wani**

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

Bail App. No. 04/2022 in  
CRM (M) No. 10/2022

Manzoor Ahmad Dar Th. Zakir Ahmed Bhat

...Petitioner(s)

Through: Mr. A. H. Bhat, Adv.

Vs.

UT of J&K and Anr.

...Respondent(s)

Through: Mr. Summeet Bhatia, GA

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE  
ORDER

1. The petitioner in the instant petition seeks bail in FIR No. 566/2021 for commission of offences under Section 8, 20, 29 of NDPS Act registered under FIR No. 566/2021 with Police Station Udhampur.

2. The background facts under the cover of which the instant petition is filed would reveal that the petitioner came to be arrested on 14 th November, 2020, in connection with FIR No. 566/2021 for commission of offences under Section 8, 20, 27A and 29. The petitioner however, came to be charged along with other accused persons for the commission of offences under Section 8, 20 and 29 after the chargesheet was laid before the trial court by the prosecution. It also gets revealed that prior to the filing of the instant petition, the petitioner herein had moved an application for grant of bail before the trial court on 14 th December, 2021, which however, came to be dismissed on 28th December, 2021.

3. According to the prosecution version, Police Station Udhampur received an information on 1st November, 2020, from a reliable source that one Nisar Ahmad, driver of Tavera vehicle bearing registration No. JK03D-6434 and its owner namely Irfan Pathan are transporting charas in the said vehicle having entered into the territorial jurisdiction of the Police Station, Udhampur resulting in

the registration of FIR No. 566/2020, whereupon the investigation came to be assigned to one Sub-Inspector, Vishal Dogra who found the vehicle in question near four way road at Thill Udhampur with three persons sitting in the said vehicle and two persons on a Scooty near the said vehicle.

4. According to the prosecution version, all the five persons were apprehended out of which three persons sitting in the Tavera disclosed their identity as Nisar Ahmad (driver), Irfan Pathan sitting next to him and Samart Mughal sitting on the back seat whereas two persons sitting on the Scooties No. JK02BS-544 disclosed their names as Amar Chowdhary and on Scooty No. JK02CJ-0708 as Nazar Mohammad and upon offering them the option of search in presence of the Magistrate/Gazetted Officer and after obtaining their consent in writing thereof, 1 kg and 820 grams packet wrapped in Khaki Tape was recovered from the drivers footrest place and two bundles of the currency notes of Rs. 500/- denomination amounting to Rupees one lac, were recovered from the lap of the driver. Upon search of the Scooties, a packet weighing 1kg and 520 grams of charas were recovered from the dicky of each Scooty.

5. The further case of the prosecution is that during the course of investigation, no evidence regarding involvement of Amar Chowdhary surfaced, as such, benefit under Section 169 Cr. P. C was given to him and he was cited as an approver.

6. It is further prosecution case that during the course of investigation, it surfaced that one Mohd Azam running a shop at Jalalabad chowk Sujwan was found to be involved in the case and a raid was conducted at his shop in presence of the Executive Magistrate and upon a disclosure statement made by him, charas in a settee in his shop came to be recovered weighing 1 kg and 220 grams and upon a statement made by him under Section 164 Cr. P. C. as also upon collection of the call details of the accused persons, it surfaced during the course of investigation that an amount of Rs. 50,000/- had been transferred by the said Mohd Azam into the bank account of the petitioner herein and that both Mohd Azam and the petitioner herein failed to give satisfactorily reply about the said transactions suggesting that the petitioner also indulged in the illegal trade of narcotics.

7. Objections to the petition have been filed by the respondents, wherein the bail application is being opposed inter-alia on the grounds that the petitioner is involved in the commission of an offence of heinous nature which carries a severe punishment and that the petitioner, as such, does not deserve to be enlarged on bail as there is every apprehension that the accused may tamper/influence the prosecution witnesses. Heard learned counsel for the parties and perused the record.

8. According to the learned counsel for the petitioner, the accused person came to be arrested by the respondents without any reason merely on account of a bank transaction amounting to Rs. 50,000/- having under taken by accused Mohd Azam and the petitioner. Learned counsel for the petitioner would further contend that the alleged contraband was never ever recovered from the petitioner by the Investigating Agency and that the petitioner came to be roped and implicated in the case by the Investigating Agency without any basis or evidence much less a legal, cogent and credible one. Learned counsel for the petitioner would further contend that Section 29 of the NDPS Act having regard to the facts and circumstances of the case never got attracted against the petitioner and that

the denial of bail by the trial court to the petitioner in terms of order dated 28th December, 2021, has been unjustified, as such.

9. Per contra, learned counsel for the respondents would make his submissions in line and tune with the contentions raised in the objections and would oppose the grant of bail to the petitioner.

10. The settled position of law as evolved by a long line of decisions of the Apex Court on the subject relating to grant of bail is that there is no straight jacket formula or settled rules for the use of discretion but at the time of deciding the question of "bail or Jail" in non- bailable offences court has to exercise its judicial discretion not only as per the settled law but, also according to the principle laid down by the Code of Criminal Procedure and judicial precedence. A reference in this regard is made to the Apex court Judgment passed in case titled as "Data Ram Singh vs. State of Uttar Pradesh and Ors" reported in 2018 (3) SCC page 22, would be relevant and germane, wherein at Paras 1, 2, 4 and 5 following has been noticed:

1. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (which ever expression one may wish to use) is an exception.

Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

2. There is no doubt that the grant or denial of bail is entirely the discretion of the Judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accuse person to police custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in inhuman Conditions in 1382 Prisons.

5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah vs. Union of India going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia vs. State of Punjab in

which it is observed that it was held way back in Nagendra Nath Chakravarti, In that bail is not be withheld as a punishment. Reference was also made to Emperor vs. H. L. Hutchinson wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days."

11. Keeping in mind the aforesaid legal position and advertng to the facts of the case, indisputably the alleged contraband has not been recovered from the petitioner herein, so much so, the respondents have nowhere contended that the petitioner and the other accused persons hatched a criminal conspiracy while undertaking commission of the alleged offences. The only case setup by the prosecution against the petitioner herein is based on the bank transaction of Rs. 50,000/- having allegedly undertaken by the accused Mohd Azam with the petitioner. On account of non-recovery of the alleged contraband from the petitioner there cannot be a presumption against the petitioner attracting the rigor of Section 37 NDPS Act, in the matter of bail. The implication of the petitioner on the basis of the bank transaction supra cannot per se said to be sufficient evidence at this stage suggesting that the petitioner is the guilty of the alleged offences.

12. The respondents even though in the objections filed to the instant petition have contended that there is apprehension that the accused may tamper/influence the prosecution witnesses yet have not based the said contention with any supporting material thereof, so much so, the respondents have not expressed anywhere in the objections that there is likelihood that the petitioner would commit offences while on bail.

13. Having regard to the facts and circumstances of the case, seemingly it appears at this stage that there are reasonable grounds for believing that the petitioner is not guilty of the offences alleged and that he is not likely to commit an offence while on bail. Accordingly, application is allowed and petitioner is granted bail subject to the following conditions: -

i) furnishing of surety bond to the tune of Rs.50,000/- with two sureties to the satisfaction of the trial court and personal recognizance in the like amount before concerned Incharge/Superintendent Jail;

ii) that applicant/accused shall appear before the Trial court on every date of hearing unless exempted by the Trial Court;

iii) that the applicant/accused shall not leave the territorial jurisdiction of the High Court of U. T. of J&K and Ladakh till the conclusion of the trial unless permitted by this Court;

iv) that applicant/accused shall not commit an offence similar to the offence of which is accused, or suspected, of the commission of which he is suspected;

v) that applicant/accused 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 Court or to any police officer or tamper with the evidence;

vi) that in the event, the prosecution collects any material during the period the applicant/accused is on bail that he has influenced the witnesses or tried to intimidate them, the prosecution would be well within its right to move an application before this Court for cancellation of his bail.

14. Disposed of in terms of above.

(JAVED IQBAL WANI) JUDGE SRINAGAR 31.05.2022 Sakeena