



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

Reserved on 30.03.2026
Pronounced on. 10.04.2026
Uploaded on: 10.04.2026

**Whether the operative part or full
judgment is pronounced: Full**

Bail App No. 272/2025

Afroz Ahmed Sheikh, aged 60
years, S/o Ghulam Nabi Sheikh,
R/o Village Wikibalan, Tehsil
Shangas District Anantnag
A/p lodged in District Jail
Amphalla, Jammu

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

Through: Mr. Prince Khanna, Advocate

Vs

Narcotics Control Bureau Jammu
Zone, through its Director.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This application has been filed by the petitioner for grant of bail in complaint titled, "Union of India vs. Afroz Ahmad Sheikh", for commission of offences under Sections 8 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"), pending before the court of learned Special Judge (NDPS Cases), Jammu (hereinafter to be referred as "the trial court"), after his bail application was rejected by the learned trial court.



2. Bail is sought primarily on the ground of prolonged incarceration, as the petitioner has remained in judicial custody for the past five years. It is urged that the learned trial court has failed to appreciate that such extended detention, without a conclusion of trial, effectively amounts to impermissible pre-trial punishment. It is further contended that the sluggish pace of the proceedings is evidenced by the fact that it took nearly five years to examine only six prosecution witnesses, a delay in no way attributable to the petitioner. Notably, after the prosecution evidence was closed and the petitioner's statement was recorded under Section 313 Cr.P.C., the matter reached the stage of final arguments. However, at this advanced stage, the learned Special Public Prosecutor informed the Court of a supplementary charge sheet filed against a co-accused, Ghulam Mohudin Shah. Consequently, the learned trial court has deferred the final arguments in the petitioner's case indefinitely, pending the conclusion of the trial against the co-accused. This creates an unwarranted and indefinite hiatus in the petitioner's trial. Furthermore, the witnesses examined so far are unreliable, and their testimonies suffer from material contradictions that cast serious doubt on the prosecution's case. Given these circumstances, continued detention violates the petitioner's right to a speedy trial.
3. The respondents have filed the objections opposing the bail application of the petitioner on the ground that the petitioner was found in possession of commercial quantity of narcotics contraband, as such, rigors of section 37 of NDPS Act are applicable, therefore, he is not entitled to bail. Further, reliance has been placed on the judgment of the Hon'ble Supreme Court of India in **"Narcotics Control Bureau vs. Mohit Aggarwal, 2022**



LiveLaw (SC) 613, wherein it has been held that length of custody cannot be the sole ground for grant of bail in NDPS cases where commercial quantity of the contraband is involved. It is further stated that filing of the supplementary complaint cannot be termed as tactics to delay the proceedings.

4. Mr. Prince Khanna, learned counsel for the petitioner, submits that the learned trial Court has failed to appreciate the petitioner's contentions in their proper legal perspective. He further submits that the bail application was erroneously rejected by the trial court on the sole, unsustainable ground that the issue of prolonged incarceration is a matter to be considered exclusively by a Constitutional Court and not by a trial Court. It is contended that the petitioner has undergone a significant period of incarceration, and as far as the petitioner is concerned, the trial stands concluded. Consequently, his continued detention shall serve no legitimate procedural purpose and amounts to pre-trial punishment, therefore, the petitioner is entitled to bail.
5. Per contra, Mr. Vishal Sharma, learned DSGI appearing for the respondent, submits that since the contraband seized from the petitioner's possession falls within the commercial quantity category, the mandatory rigors of Section 37 of the NDPS Act are fully attracted. He contends that this section imposes a stringent statutory embargo on the grant of bail, which the petitioner has failed to overcome. Mr. Sharma further argued that prolonged incarceration, in and of itself, does not dilute the statutory requirements of Section 37, especially in cases of this gravity. It is emphasized that since the prosecution evidence has already concluded and the matter has reached the



stage of final arguments, there is no justification for enlarging the petitioner on bail at this belated stage of the trial.

6. Heard learned counsel for the parties and perused the record.
7. The brief facts relevant for disposal of the present bail application are that on 28.09.2020 at about 10:00 hours, Sh. Vijay Kumar, Intelligence Officer, received a secret information from a reliable source that one person namely Afroz Ahmed Sheikh S/o Ghulam Nabi Sheikh R/o Village Wikibalan, Tehsil Shangas, District Anantnag, carrying a huge quantity of narcotic drug i.e. Charas, concealed in a black colour shoulder bag, was travelling from Anantnag to Surat, Gujarat via Jammu by a public transport. It was further informed that the said person would reach Parmandal Morh, Jammu between 14:00 to 17:00 hours on 28.09.2020. On receipt of the said information, a team was constituted by Sh. Mohd. Nawab, Superintendent, NCB Jammu, and Sh. R. P. Singh, Junior Intelligence Officer was appointed as the Seizing Officer. The team laid a naka at Parmandal Morh, Jammu. During checking at about 16:00 hours, a bus bearing registration No. RJ-23PB-2067 coming from Jammu was signaled to stop. During search of the vehicle, one person sitting on Seat No. 'E' (Sleeper Class) was questioned, who disclosed his name as Afroz Ahmed Sheikh and stated that he was travelling towards Gujarat. During the search of the black colour bag carried by him, five packets wrapped with brown tape were found concealed inside the bag. On opening the packets, charas in spherical form was recovered. The contraband was weighed on the spot along with packing material and was found to be 5.5 kgs. After removing the packing material, the contraband weighed 5.400 kgs. Thereafter, all the spherical pieces were broken and mixed to make a



homogeneous mixture, which was kept in a transparent polythene bag and marked as Lot-A. The contraband was seized on the spot, and a recovery-cum-seizure memo was prepared. Thereafter, the contraband along with the accused was brought to the NCB Office, Jammu, where the statement of the accused was recorded under Section 67 of the NDPS Act. On the basis of the said statement, the accused was arrested on 29.09.2020 for commission of offences under Sections 8/20/27-A and 29 of the NDPS Act. On the same day, two representative samples of 24 grams each were drawn from Lot-A and were sent for chemical examination. After receipt of the FSL report, a complaint came to be filed before the learned Principal Sessions Judge, Jammu on 25.03.2021.

8. Thereafter, vide order dated 27.07.2021, the petitioner was charged for commission of offence under sections 8/20 of NDPS Act. The record of the trial court further reveals that vide order dated 06.11.2024, the evidence of the prosecution was closed, and the case was posted on 20.11.2024 for recording the statement of the petitioner. The statement of the petitioner/accused under section 313/342 Cr.P.C. was recorded on 09.12.2024.
9. Admittedly, the quantity of contraband recovered from the petitioner falls within the commercial category; however, bail is sought on the specific ground that the trial proceedings have been indefinitely deferred by the learned trial Court. It is contended that since the conclusion of the trial is now contingent upon the proceedings of a supplementary complaint, the petitioner's continued detention amounts to unjustified incarceration.



10. This court summoned the record of trial court and found that the learned counsel appearing for the petitioner, though initially conceded to the submission made by the learned APP on 27.05.2025 that the trial in the complaint filed against the petitioner cannot continue, but as is evident from the order dated 02.12.2025, learned counsel for the petitioner sought an adjournment so as to enable him to lay a motion for segregation of the trial of the petitioner in the complaint filed against him. Further, vide order dated 21.01.2026, the newly appointed Special Public Prosecutor sought an adjournment for arguing the matter finally and vide order dated 17.02.2026, the learned SPP sought further time to argue the matter finally.
11. A perusal of the supplementary complaint filed against Ghulam Mohudin Shah reveals that he is already accused in another case under the NDPS Act and in the supplementary complaint there are no fresh/new allegations against the petitioner, rather, in the main complaint filed against the petitioner, it has already been alleged that petitioner had procured the charas from Ghulam Mohudin Shah. The supplementary complaint against Ghulam Mohudin Shah was filed on 11.03.2025 and this court is surprised to note that till date the learned trial court has not heard the arguments on charge/discharge in the supplementary complaint against Ghulam Mohudin Shah.
12. In the complaint against the petitioner, the prosecution evidence stands concluded and the matter is posted for final arguments. However, the learned trial court without formally adjudicating whether a deferment of proceedings was legally warranted, deferred the case against the petitioner in a mechanical manner. This decision was based solely on the submission of the



learned SPP and an initial concession by the petitioner's counsel, rather than a reasoned judicial determination on whether such a course was necessary or permissible under the law.

13. In cases under the NDPS Act, it is incumbent upon both the prosecution and the trial court to ensure that proceedings are concluded with the utmost expedition. This mandate is particularly critical given the stringent punishments prescribed under the Act and the statutory embargo on bail for offences involving a commercial quantity. This Court finds that the learned trial court has in mechanical manner has deferred the proceedings in the present complaint. It is further evident that, although the petitioner's counsel initially conceded to the learned APP's submission that the proceedings should be deferred, but subsequently it was realized by him that segregation of trial was necessary. Consequently, on 02.12.2025, an adjournment was sought by the counsel for the petitioner to move a formal motion for the segregation of the petitioner's trial from that of the co-accused, Ghulam Mohudin Shah.
14. As noted in the orders dated 21.01.2026 and 17.02.2026, a significant contradiction has emerged in the respondent's side, the learned Special Public Prosecutor (Spl. PP), despite having previously insisted that the case against the petitioner be deferred, has now sought time to address the matter finally. At the cost of repetition, it is worthwhile to mention that after initially conceding to the submission made by the learned APP that the proceedings in the complaint against the petitioner are required to be deferred, the learned counsel for the petitioner realised that the trial in the complaint against the petitioner is required to be segregated vis-à-vis the



other accused, namely Ghulam Mohudin Shah, and that is why he sought adjournment to lay a motion for segregation of trial on 02.12.2025.

15. In fact, the situation arisen in the present case is akin to the one where a Court summons an additional accused in terms of Section 319 Cr. P.C when it finds that summoning of additional accused is necessary in view of the evidence already brought on record. In this context, it would be appropriate to take note of the guidelines laid down by the Hon'ble Supreme Court in **“Sukhpal Singh Khaira vs. The State of Punjab, 2022 INSC 1252”**, which are reproduced as under:

“III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?”

(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.



(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.”

16. It is, thus, evident that even in instances where an additional accused is summoned, the trial Court must determine whether such accused is to be tried jointly or separately. Should the Court determine that a separate trial is necessitated, it must proceed with the main case independently. In the opinion of this Court, this principle is squarely applicable to the present matter. By deferring the proceedings in the complaint filed against the petitioner, the learned trial court has, in effect, impliedly directed a separate trial. This Court is of the considered view that the decision to defer proceedings was taken in a mechanical manner, without due application of mind. Learned counsel for the petitioner had rightly sought an adjournment before the learned trial court for separation of trial of the petitioner; consequently, there exists no legal impediment preventing the trial Court from proceeding with the main case and adjudicating the same in accordance with law.

17. In view of the aforesaid discussions, this Court is of the considered view that the learned trial court is required to re-examine the issue of deferring the



proceedings in the complaint filed against the petitioner in light of what has been said and discussed above.

18. Accordingly, this Court is of the considered view, at this stage when this Court has formed an opinion that the learned trial court is required to re-examine the issue of deferring the proceedings in the complaint filed against the petitioner, the petitioner cannot be granted bail, as such, the present application is rejected. However, the learned trial court is directed to re-examine the issue of deferring the proceedings in the complaint filed against the petitioner within the period of 15 days from today and thereafter proceed ahead in accordance with law. In case, the trial court decides to defer the proceedings in the complaint filed against the petitioner, the petitioner shall be at liberty to file a fresh bail application. The learned trial court is further directed to conclude the arguments on charge/discharge and pass appropriate orders in accordance with law in the supplementary complaint titled “Narcotics Control Bureau vs. Ghulam Mohiuddin Shah & Anr” within a period of 30 days from today.
19. Disposed of.
20. Record of the trial court be sent back forthwith alongwith a copy of this order for compliance.

(RAJNESH OSWAL)
JUDGE

Jammu:
10.04.2026
Karam Chand

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes