



2026:JKLHC-JMU:943

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

Crl A(D) No. 26/2025

Reserved on: 24.03.2026

Pronounced on : 02.04.2026

Uploaded on: 02.04.2026

Whether the operative part or
full judgment is pronounced: "FULL"

**Amin Allaie, Age 46 years
S/o Hazi Ghulam Moh-u-Din
R/o near Petrol pump Shan-e-Kashmir National
Highway Sangum Tehsil Bijbehara Anantnag
Kashmir at present District Jail Jhajjar through
his wife Rubina age 40 years W/o Amin Allaie R/o
near Petrol pump Shan-e-Kashmir National
Highway Sangum Tehsil Bijbehara Anantnag
Kashmir**

...Applicant(s)/Petitioner(s)

Through: - Mr. I.H. Bhat, Advocate

v/s

National Investigating Agency, Jammu

...Respondent(s)

**Through:- Mr. Vishal Sharma, DSGI with
Mr. Eeshaan Dadhichi, CGSC.
Mr. Chandan Kumar Singh, Public Prosecutor,
NIA**

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Sanjay Parihar-J

1. The appellant, who figures as A-13 in Challan File No. 22 arising out of Crime Case No. RC-03/2020/NIA/Jammu dated 23.06.2020, registered under Section 120-B IPC, Sections 8/21 NDPS Act and Sections 17, 18 and 20 of the UAPA, is facing trial before the Court of Special Judge, NIA, Jammu (*hereinafter referred to as "the Trial Court"*). Aggrieved of



the order dated 19.04.2025 whereby his application for grant of bail has been declined, the appellant has invoked the appellate jurisdiction of this Court under Section 21 of the NIA Act, primarily on the ground that neither any recovery has been effected from him nor is there any material to demonstrate that he had dealt with narcotic substances or generated proceeds for alleged terrorist funding in the Union Territory of Jammu and Kashmir. It is contended that the prosecution case is founded substantially upon disclosure and confessional statements of co-accused, coupled with alleged telephonic contacts, without any independent corroboration, and that despite the appellant being in custody since 01.03.2021, the evidence recorded thus far does not disclose any incriminating material against him.

2. The learned counsel for the appellant has urged that the learned Trial Court has failed to undertake the statutory exercise mandated under Section 43-D (5) of the UAPA, namely, to record satisfaction as to whether there exist reasonable grounds for believing that the accusations against the appellant are *prima facie* true. It is further submitted that the entire case rests upon the statements of co-accused and an approver, which in law constitute weak evidence and cannot be the sole basis to deny bail. On the other hand, the prosecution asserts that the appellant was actively involved in smuggling and transportation of narcotic substances and that the proceeds thereof were utilised for providing



logistical support to militant activities, relying upon documentary material including voice clips and chats to substantiate the alleged conspiracy.

3. The legal position governing the grant of bail under the UAPA is no longer *res integra*. In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 9, the Hon'ble Supreme Court held that at the stage of bail, the Court must examine whether there are reasonable grounds for believing that the accusations are *prima facie* true, based on the material placed on record. However, the rigour of Section 43-D (5) is not absolute. In *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, it has been authoritatively held that constitutional courts retain the power to grant bail in cases of prolonged incarceration where the trial is unlikely to conclude within a reasonable time. In *Vernon v. State of Maharashtra*, (2023) 10 SCC 620, the Supreme Court emphasised that the Court is not expected to act as a mere post office of the prosecution but must assess the probative value of the material relied upon. Similarly, in *Asif Iqbal Tanha v. State (NCT of Delhi)*, (2023) 9 SCC 291, it was held that mere association or contact, in the absence of specific acts constituting terrorist activity, cannot justify denial of bail. Further, in *Gurwinder Singh v. State of Punjab*, 2024 INSC 92, it has been reiterated that while delay alone may not be decisive, the weakness of the prosecution case coupled with prolonged incarceration can be a valid ground for grant of bail.
4. It is equally well settled that the offence of criminal conspiracy under Section 120-B IPC requires a clear meeting of minds and a demonstrable



agreement to commit an illegal act. In *State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600*, it has been held that mere knowledge or association is not sufficient to establish conspiracy in the absence of cogent evidence showing participation. Likewise, in *Kehar Singh v. State (Delhi Administration), (1988) 3 SCC 609*, the Supreme Court observed that conspiracy must be proved either by direct evidence or by a chain of circumstances which unerringly points towards the existence of such agreement. Mere suspicion, however strong, cannot substitute proof.

5. We have examined the trial court record and heard, the counsel for the parties. As per the charge-sheet, the allegation against the appellant is that he was an active smuggler/transporter of charas, who, between the years 2003 and 2018, committed various acts and supplied the contraband to different dealers operating in Mumbai, Delhi, Nasik and Ajmer. It is further alleged that in the year 2012, he was arrested in an NDPS case registered by Police Station Qazigund and remained in detention, and that during such detention he came into contact with A-8, Showkat Ahmad Parray, who was also lodged in jail. Thereafter, in the year 2016, the appellant was released from custody. The prosecution case further proceeds on the footing that in the year 2018, when a narcotic drug consignment allegedly belonging to the appellant was seized by the NCB at Ban Toll Plaza, Jammu, he contacted A-8 for assistance, along with co-accused Altaf Ahmed Shah (A-10). It is also alleged that he remained in regular contact with co-accused Romesh Kumar (A-11) and was indulging



in the sale of narcotic substances. From a reading of the charge-sheet, the case against the appellant is stated to rest primarily on the statement of the approver, namely A-8 Showkat Ahmad Parray, who is said to have disclosed that the appellant too was an active smuggler/transporter of narcotic substances. During the course of arguments, learned counsel for the appellant fairly conceded that there was indeed an FIR against the appellant pertaining to possession of narcotic substance, in which he had been granted bail, but submitted that apart from the said FIR, there is nothing incriminating against him. It is not in dispute that in the present case no recovery has been effected from the appellant. He has been arrayed as an accused essentially on the strength of the approver's statement. Learned counsel for the appellant, therefore, vehemently argued that the statement of an approver is, by itself, a weak piece of evidence and, when coupled with the absence of any recovery and the absence of any direct participation of the appellant in the acts leading to the occurrence in question, it cannot be readily inferred that the appellant had any such connection with the co-accused as would justify his implication in the present case.

6. Though it has been argued that the appellant was arrested in FIR No. 335/2012 of Police Station Bijbehara under Section 8/20 of the NDPS Act in relation to an incident having no connection with the present case, it is also the stand of the appellant that he has already been enlarged on bail in the said case. The prosecution, however, seeks to rely upon voice clips



and chats to demonstrate that the appellant was in constant contact with A-1, A-8 and A-10. Insofar as A-1 Abdul Momin Peer is concerned, he is stated to be the person who had asked the appellant to provide him a truck, which, according to the prosecution, was thereafter used for smuggling narcotic substance from Tangdhar. The said truck was subsequently purchased by A-1 and A-4 Afaq Ahmed Wani after payment of an advance amount of ₹5 lakhs. Later, the truck came to be seized, as the finance company which had financed it was not satisfied. It is further alleged that A-1 used to receive narcotic substance from across the border and thereafter transport the same to the mainland. However, except for the allegation that the appellant facilitated the purchase of the truck by A-1, there is no material to show, at least *prima facie*, that the appellant acted in any manner so as to invite the commission of any offence under the NDPS Act. As regards A-1, he was found in possession of 5 kilograms of heroin and, on his disclosure, large quantities of narcotic substance were recovered from the possession of A-2, A-3, A-4, A-5 and A-6, besides recovery of cash amounting to ₹1.5 crore. Insofar as those recoveries are concerned, the participation attributed to the appellant, on the face of the record, appears to be minimal. So far as A-8 Showkat Ahmad Parray is concerned, he is alleged to be one of the masterminds of the conspiracy and his involvement in narcotic drug smuggling is specifically recorded in paragraph 17.65 of the charge-sheet. Likewise, A-10 Altaf Ahmed Shah is alleged to have become addicted to drugs while working in the showroom



of A-8 and to have procured a SIM card which was being used by A-8 and others to facilitate smuggling of narcotic substance. According to the prosecution, the appellant was also in contact with A-10 as well as A-11 Romesh Kumar.

7. What emerges from the charge-sheet and the material collected during investigation is that the appellant was, on one occasion in the year 2012, found in possession of contraband of the kind charas, for which FIR No. 335/2012 of Police Station Bijbehara under Section 8/20 of the NDPS Act came to be registered against him, and in that case he has already been enlarged on bail. The contact attributed to the appellant with the co-accused appears, *prima facie*, to be peripheral in nature and may, at the highest, indicate that he was aware of the nature of the activities allegedly being undertaken by some of the co-accused, particularly A-11 Romesh Kumar, who was serving in the NCB and from whose possession cash amounting to ₹91 lakhs was recovered, and who has already been enlarged on bail by the Hon'ble Apex Court. Except for the statement of the approver, there appears to be no legally tenable material collected during investigation so as to substantiate any direct participation of the appellant in the recovery of narcotic substance effected on 11.06.2020 and thereafter. Merely because the appellant was found in possession of narcotic substance, namely charas, in the year 2012, it cannot, by itself, lead to a presumption that he continued to indulge in such activities thereafter or that he had knowledge of the recoveries effected from A-1,



A-2, A-3, A-4, A-5 and A-6 on 11.06.2020 and subsequent thereto. The principal thrust of the prosecution is that the voice clips and chats recovered during investigation would demonstrate that the appellant had conspired with the co-accused for sale and purchase of narcotic substance and for collecting funds, which were later to be utilised for logistic purposes. The appellant is, however, nowhere shown to be associated with any militant organisation. In fact, even from the transcripts recovered from the mobile phone, the conversation attributed to him with A-1 appears only to pertain to an incident relating to the sale of a truck, which the appellant may have facilitated. Insofar as the conversation with A-8, the approver, is concerned, the prosecution case is that A-8 has stated that the appellant had been indulging in smuggling of narcotics.

8. The prosecution case in the present matter is primarily founded upon the statement of an approver and confessional statements of co-accused. The evidentiary value of such material stands conclusively settled. In *Kashmira Singh v. State of M.P., (1952) 1 SCC 275*, it was held that the confession of a co-accused is a weak type of evidence and cannot be made the foundation of conviction; it may at best be used to lend assurance to other independent evidence. This principle has been reiterated in *Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184*, and finds its origin in *Bhuboni Sahu v. King, AIR 1949 PC 257*, wherein it was held that such confession is not substantive evidence within the meaning of Section 3 of the Evidence Act. The recent pronouncement of the Hon'ble



Supreme Court (2025 *LiveLaw SC 598*) has further clarified that confessional statements of co-accused can be taken into consideration only subject to strict compliance with Sections 24 to 30 of the Evidence Act and cannot independently sustain the prosecution case.

9. Applying the aforesaid settled principles to the facts of the present case, it emerges that no recovery has been effected from the appellant, nor is there any material to demonstrate his conscious possession, direct participation, or involvement in any transaction leading to the recovery of narcotic substances from other co-accused. The entire case against him rests upon the statement of an approver and alleged telephonic contacts, without any corroborative evidence such as financial transactions, recovery, or overt acts attributable to him. Even the role attributed to the appellant, as borne out from the charge-sheet, appears to be peripheral and inferential in nature.
10. In such circumstances, even if the prosecution material is taken at its face value, the same does not satisfy the threshold laid down in *Watali* (supra), as there are no reasonable grounds to believe that the accusations against the appellant are *prima facie* true. The absence of recovery, lack of direct nexus, and the reliance upon weak evidentiary material such as confessional statements further dilute the prosecution case. The continued incarceration of the appellant, particularly in the backdrop of prolonged custody, would be inconsistent with the mandate of Article 21 of the Constitution, as recognised in *K.A. Najeeb* (supra).



11. Accordingly, this Court is of the considered opinion that the appellant has succeeded in carving out a case for grant of bail. The impugned order dated 19.04.2025 is set aside and the appellant is directed to be released on bail subject to the following conditions:-

- i. The appellant shall furnish a personal bond in the sum of ₹1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court;
- ii. He shall appear before Trial Court on each and every date of hearing and shall not leave the territorial jurisdiction of the Union Territory of Jammu & Kashmir without prior permission of Trial Court;
- iii. He shall not indulge in any offence similar to the one for which he stands charged.

12. CrI A(D) No. 26/2025 stands *disposed of*. Copy of the order shall be notified to the Trial Court for compliance.



सत्यमेव जयते

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
02.04.2026
Akshil Dev

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes