

**IN THE COURT OF 1<sup>ST</sup> ADDITIONAL SESSIONS JUDGE JAMMU**

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File No: 588/2023 Bail Appl.  
CNR No.: JKJM010032692023  
Date of Institution: 12.08.2023  
Date of Order: 29.08.2023

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**In the Case of:**

Manga Ram age 28 Years S/o Sh. Kundan Lal R/o Jogoia Tehsil Khour A/P Sungal Morh, Aadarsh Colony, Tehsil Akhnoor, District Jammu.

...(Applicant/Accused)

(Through: Mr. Karan Sharma, Advocate)

**Versus**

UT of J&K through SHO/ I/C Police Station Akhnoor, Jammu.

.....(Non-Applicant)

(Through: Mr. Manzar Khayam, Ld. APP)

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**In the matter of:**

Application for Grant of Bail.

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**Present: VIRINDER SINGH BHOU**

**J.O Code: JK-00067**

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**ORDER**

1. Through the medium of the above titled bail application, applicant-accused named in the title of the application has sought indulgence of this court for grant of bail to him in case **FIR No. 198/2023 of P/S Akhnoor, Jammu U/Ss 8/21/22 of NDPS Act** on the facts and grounds; that the applicant is a peace loving and law abiding citizen of UT of J&K having moveable and immoveable property in the UT of J&K; that the applicant is an innocent person and has neither committed any offence nor is involved in the commission of any offence but the non-applicant has registered a false and frivolous case against the applicant-accused and arrested him on 14.07.2023 and since the date of his arrest, he is languishing in the custody of non-applicant; that the applicant commands good reputation in the society; that applicant is ready to furnish bail and surety bonds to the entire satisfaction of this Court; that applicant is ready to undertake to abide by any condition, which this Court may deem fit to impose and that he in no manner will tamper or hamper with the prosecution evidence; that he also undertakes to remain present before the Court as and when directed, if he is admitted to bail. Lastly, the applicant has prayed for grant of bail to him in the afore-stated case FIR and has stated that same will be in the interest of justice.

2. Prosecution has contested the bail application by submitting its objections thereto wherein the prosecution has contended that applicant/accused is involved in case **FIR No. 198/2023 of P/S Akhnoor, Jammu U/Ss 8/21/22 of NDPS Act** and, as such, has been arrested in the said case; that offences alleged to be committed by the applicant are serious, heinous, anti-social as the applicant/accused is alleged to have been found carrying/in illegal possession of Capsules- PROXYWEL SPAS and Tramadol Hydrochloride, prohibited narcotic Drugs, which fall within the category of intermediate quantity; that the source and destination of the Narcotic drug recovered from the applicant/accused is yet to be ascertained, as such, it is premature to entertain the present application; that offences committed by the applicant/accused are against the society at large as the accused by indulging in such illicit trade of drug trafficking is spreading the evil of drug addiction in the society, which is spoiling the lives of young boys and girls,

as such, the accused does not deserve any leniency from the Court and is required to be dealt firmly by the agencies administering criminal justice system; that FSL report is awaited and therefore, investigation of the case is likely to get prejudiced if applicant/accused is admitted to bail; that if applicant/accused is granted bail at this stage there is every apprehension that applicant/accused will get encouraged to indulge again in similar activities and is also likely hamper and tamper with the prosecution evidence and jump the bail. Lastly the prosecution has prayed that application for grant of bail be dismissed.

3. Upon presentation of the bail application, report from the concerned police was called, which has been submitted. Perusal of report submitted by police concerned, makes it evident that on 14.07.2023, a case under **FIR No. 198/2023 of P/S Akhnoor, Jammu** was registered against the applicant-accused for the commission of offences **U/Ss 8/21/22 of NDPS Act** and in the course of investigation of said case, 125 grams of contraband (capsules- Tramadol Hydrochloride) is alleged to have been recovered from the possession of applicant/accused and regarding the illegal possession of the same, applicant/accused has been arrested by the non-applicant. Hence, the instant application for bail has been presented before this Court on behalf of the applicant/accused.

4. Heard learned Counsel for the applicant, as well as Ld.APP at length. Learned Counsel for the applicant has reiterated all the grounds taken by the applicant in the bail application in support of his arguments and has argued that the accused is an innocent person and has been falsely implicated in the case; that there are reasonable grounds for believing that applicant/accused has not committed the offences alleged. Ld. Counsel for applicant/accused has further argued that rigour of section 37 of NDPS Act is not attracted to the case of the applicant and therefore, accused cannot be kept behind the bars any further. Accordingly, learned Counsel for the accused/applicant has prayed that applicant/accused be admitted to bail in the above stated case FIR.

5. Per-contra Ld.APP has also reiterated the averments and contentions raised by him in the objections filed and further has argued that applicant/accused is involved in commission of heinous and non-bailable offences under NDPS Act and therefore, he cannot be released on bail. Accordingly, Ld. APP has prayed that application for bail presented on behalf of the applicant be dismissed.

6. I have given my thoughtful consideration to the grounds urged in the bail application, to the objections submitted thereto by the prosecution, arguments advanced by both the sides, as well as, law on the subject. Besides, I have also perused the report submitted. A bail application moved by an applicant involved in alleged commission of offences under NDPS Act is required to be considered in the light of Section 37 of NDPS Act. Since Section 37 of the NDPS is the relevant section and therefore, same is reproduced here and reads as under:-

**Section 37: Offences to be cognizable and non-bailable:-**

*(1) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974)*

*(a) Every offence punishable under this Act shall be cognizable;*

*(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-*

*(i) the Public prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

*(2) The limitation on granting of bail specified in Clause (b) of sub section (1) and in addition to the limitation under the Code of Criminal procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail."*

7. A bare perusal of section 37 of NDPS would make it evident that clause (b) of sub section (1) thereof prohibits grant of bail to a person accused of having committed offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity of contraband unless the prosecution has been afforded an opportunity to oppose the bail application and where the prosecution has opposed the bail application, the court is satisfied that there are reasonable grounds for believing that applicant/accused is not guilty of the offence and he is not likely to commit any offence while being on bail. Thus, it is clear that for consideration of a bail application for alleged commission of offences under NDPS Act, the court firstly is required to see if the case of the applicant/accused is hit by the rigour of Section 37(1) (b). In the instant case evidently applicant/accused is not alleged to have committed an offence under Section 19 or 24 or 27-A of NDPS Act, therefore, the only thing which this court is required to appreciate, is to see as to whether the quantity of the contraband alleged to be recovered from the applicant/accused falls within the category of "Commercial Quantity" prescribed under the notification appended to NDPS Act or not. As per the police report submitted, **125 gms of Tramadol HCL** has been seized from applicant/accused. **As per Notification S.O 1761-E of 2018 of the NDPS Act "Small quantity" of Tramadol is prescribed as 5 gms whereas the "Commercial quantity" thereof is prescribed as 250 grams**, which makes it manifest that rigour of section 37 of NDPS Act is not attracted to the case of the Applicant.

8. Now as it is clear that bar of section 37 of NDPS Act is not attracted to the case of the applicant therefore, the application of the applicant is required to be considered in the light of Section 437 Cr.PC. In the instant case the offences alleged against the accused do not carry the punishment of death or imprisonment for life as such, the bar to

the grant of bail in terms of Section 437 Cr.PC is also not attracted to the case of the applicant/accused. Investigation in the case is reported to be almost complete except for the FSL report, which is stated to be awaited. Applicant/accused has been in custody since 14.07.2023. Since, every person is presumed to be innocent till he is proved guilty and therefore, applicant/accused cannot be kept in custody any further as same will tantamount to punishing him even before putting him to trial which is not permissible by law. Prosecution has not alleged any criminal history to the applicant/accused in the report submitted by police and therefore, apprehension of prosecution that applicant/accused may repeat the commission of similar activity is not supported by any material at all. It is also settled now that grant of bail to an accused person is to be a rule and its refusal only as an exception, therefore, applicant/accused cannot be deprived of his right to liberty, which is a sacrosanct right guaranteed to him under the constitution of the country. Mere fact that offence alleged against the accused is of heinous nature cannot be a ground for depriving the applicant/accused of his right to personal liberty when there is nothing to show that he is likely to misuse the concession if granted. Further, prosecution has not shown any material to prompt this Court to follow the rule “**bail not jail**” in breach, as such, applicant/accused at this stage has succeeded in carving out a case for grant of bail to him.

9. Hence, from what has been discussed above, the above titled bail application of the applicant-accused is **allowed** and accordingly, **applicant/accused is admitted to bail in case FIR No. 198/2023 of P/S Akhnoor, Jammu U/Ss 8/21/22 of NDPS Act**, subject to his furnishing of bail bond of one surety in the amount of Rs. 50,000/- and a personal bond of like amount, provided he is not required/involved in the commission of any other case or offence. Bail Bond shall be filed before this Court whereas, Personal Bond shall be filed before the I/C Jail concerned. The bail granted to the applicant/accused shall also be subject to conditions which are:-

- a) *That applicant/accused shall not leave the territorial jurisdiction of the UT of J&K without prior permission of this Court.*
- b) *That applicant/accused shall cooperate in the investigation of the case as and when he is required to do so and shall not in any manner try to tamper or hamper with prosecution evidence.*
- c) *That applicant/accused shall not try to intimidate or influence the witnesses of the case in any manner.*
- d) *That he shall remain present before the Court on each and every date of hearing.*
- e) *That applicant/accused shall not involve himself in any similar offence or any other offence again.*
- f) *That bail granted to the applicant/accused shall be subject to outcome of any finding in FSL report.*

10. Application is accordingly, disposed of and be consigned to records after its due compilation.

**Announced**  
**29.08.2023**

**(Virinder Singh Bhou)**  
**1<sup>st</sup> Additional Sessions Judge**  
**Jammu**