

Serial No. 51
Suppl. Cause List

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

Bail App No. 13/2026 c/w
CRM(M) 640/2025

Date of Pronouncement: 12.03.2026

Uploaded on: 12.03.2026

**Mohammad Yaqoob Beigh, Aged 58 years
S/o Mohamamd Abdullah Beigh through his
son Nazar ul Islam Residents of John
Mohalla Shopian**

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

Through: Mr. Hakim Suhail Ishtiyah, Advocate
Mr. Syed Haroon Rashid, Advocate.

Vs.

**Union Territory Through Police Station
Kulgam**

...Respondent(s).

Through: Mr. Zahid Noor, GA.

CORAM:

**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGMENT**

CRM(M) 640/2025

- 1.The investigation in case FIR No. 119/2022 under Sections 8/15 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act' for short) and Section 207 of the Motor Vehicles Act, 1988, of Police Station, Kulgam culminated into a final report/charge-sheet against three accused persons, including the present petitioner namely Mohammad Yaqoob Beigh S/o Mohammad Abdullah Beigh R/o Jan Mohalla, Shopian, under the aforesaid sections of law.
- 2.The accused, except the petitioner, came to be arrested during investigation and, as such, they have been facing the trial right from the beginning. That the present petitioner, as an accused in the case, could not be arrested by the Police Station concerned during the investigation of the case on account of the alleged fact of his going

missing without his whereabouts being immediately known. The Police Station concerned, accordingly, made a prayer in the final report/challan that proceedings in terms of the provisions of Section 299 of the Code of Criminal Procedure, 1973 (erstwhile Central Code, now repealed but applicable in the case and hereinafter referred to as the 'Code' for short), corresponding to the provisions of Section 325 of the Bharatiya Nagarik Surksha Sanhita, 2023 (hereinafter referred to as the 'BNSS' for short) may be initiated as against the petitioner-accused. At the presentation of the charge sheet, the statement of the IO of the case came to be recorded and the Id. Trial Court proceeded at the trial of the case.

3.The Id. Trial Court, vide order dated 08.09.2023, proceeded to frame formal charges against the accused for the alleged commission of offences punishable under Sections 8/15 and 29 of the NDPS Act, 2007 of the MV Act after hearing both the prosecution and the defense on the issue. The Id. Trial Court directed the prosecution to produce the evidence in the case upon pleading not guilty by the co-accused after the contents of the charge memos came to be individually read over and explained to them. The Id. Trial Court simultaneously issued a non-bailable warrant of arrest against the petitioner and also initiated the proceedings in terms of the provisions of Sections 82 and 83 of the Code against him.

4.Subsequently, the petitioner-accused surrendered before the Id. Trial Court on 04.03.2025 and the Id. Trial Court had already, vide its order dated 21.12.2024, observed that there is no need to proceed in terms of the provisions of Sections 82 and 83 of the Code against the

petitioner, as the Id. District Magistrate, Shopian, had reportedly proceeded against him for attachment of his property under the provisions of the NDPS Act. The present petitioner came to be formally charged in the case on 04.04.2024, who also pleaded not guilty. Thereafter, the petitioner-accused submitted an application before the Id. Trial Court stating therein that he admits the entire evidence of the prosecution witnesses who came to be examined at the trial in his absence during the subsistence of the proceedings under Section 299 of the Code against him. It was further pleaded by the petitioner in the said application that he even does not want the recalling of the examined prosecution witnesses for cross-examination thereof as the said witnesses have already been properly cross-examined by the learned counsel for the co-accused 1 and 2 namely *Suhail Ahmad Bhat @ Sayar S/O. Mohd Maqbool Bhat and Showkat Ahmad Naik S/O. Nazir Ahmad Naik R's/O. Okey Kulgam.*

An application also came to be filed by the prosecution before the Id. Trial Court with the prayer for recalling of the prosecution witnesses 1 to 10, who had been already examined in the absence of the petitioner, for their cross-examination to the extent of the petitioner-accused.

The Id. Trial Court, vide a common order dated 17.09.2025 impugned in the instant petition, rejected/dismitted the application of the petitioner-accused while allowing the application of the prosecution for recalling of the already examined PW's 1 to 10. It is the said order dated 17.09.2025 of the Id. Trial Court which is impugned in the instant petition before this Court.

5. I have heard the learned counsels for both the parties and considered their rival submissions.
6. Perused the instant petition and the copies of documents enclosed with the same, especially the order impugned dated 17.09.2025 of the Id. Trial Court. It is revealed from the perusal of the Trial Court record that Police Station concerned through the final report/charge-sheet bearing No. 4/2023 dated 15.02.2023 made a request in the operative part of the same regarding the initiation of proceedings in terms of Section 299 of the Code against the present petitioner who, according to them, could not be traced out despite extensive efforts.
7. The perusal of the first order dated 16.02.2023 passed on the final report by the Id. Trial Court while entertaining the same reveals that the Police Station concerned has made a prayer for initiation of proceedings under Section 299 of the Code as against the petitioner Mohammad Yaqoob Beigh. The Id. Trial Court also recorded the statement of the Investigating Officer in attestation of his prayer for initiation of the said proceedings as against the petitioner, however, the issuance of warrant of arrest was ordered as against the petitioner. The co-accused came to be formally charged by the Id. Trial Court vide its order dated 08.09.2023.
8. The Id. Trial Court through the same order dated 08.09.2023 directed the prosecution to produce the PW 1 for his examination on the next date of hearing as the co-accused pleaded not guilty to the charge. The present petitioner upon his surrender before the Trial Court came to be formally charged for the commission of the offences punishable under Sections 8/15 and 29 of the NDPS Act and 207 of

the MV Act vide order dated 04.04.2025 of the Id. Trial Court. He also pleaded not guilty to the charge. It is very needful to mention that the said order of the Id. Trial Court revealed that the final report/challan was filed by the Police Station concerned in the absence of the petitioner against whom proceedings in terms of Section 299 of the Code came to be initiated.

9. Upon framing of the charge against the petitioner, to which he pleaded not guilty, he filed an application before the Id. Trial Court stating therein that he admits the evidence of all the prosecution witnesses examined at the trial in his absence and he does not want to recall them for their cross-examination, who have already been cross-examined by the learned counsel for the co-accused in a proper manner in accordance with the law.

10. The prosecution, on the other hand, also filed an application before the Id. Trial Court seeking recalling of the already examined witnesses for their re-examination to the extent of the present petitioner. The prosecution took the stand in their application that no proceedings in terms of Section 299 of the Code came to be initiated in the case as regards the present petitioner.

11. In the facts and circumstances of the case, it is quite clear that proceedings in terms of section 299 of the Code came to be initiated in the case as regards the present petitioner. It is sufficient to say to the prosecution that the trial in the case could not have been initiated even against the co-accused without initiating the proceedings in terms of Section 299 of the Code against the present petitioner, who

was reported to be absconding with no prospect of his immediate arrest at the time of filing of the final report/challan.

The object of the provisions of section 299 of the Code is to preserve evidence as against an accused who has absconded and in respect of whom there is no immediate prospect of his arrest, so that the same is not allowed to get lost by the reason of death, disability, unknown whereabouts, or by any subsequent inability to procure his presence without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable. It is profitable to reproduce the provision of section 299 of the Code for the sake of convenience:

“Section 299-Record of evidence in absence of accused-

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2).....”

12.As per the provisions of Section 299 of the Code, in case any of the examined prosecution witnesses in the instant case would have died or been rendered disabled or incapable of giving evidence without an amount of delay, expense or inconvenience or incapable of being traced then his deposition was capable of being read in evidence against the present petitioner upon his facing trial. As a necessary

corollary, such an accused in respect of whom the proceedings under Section 299 of the Code have been initiated, has the discretion to admit the deposition of any of the prosecution witnesses recorded at the trial prior to his appearance at the trial.

13. Allowing the prosecution to recall the already examined witnesses despite the admission of their depositions will tantamount to granting undue concession to the prosecution for making an attempt to improve its case, besides being against the logic and object of the provisions of Section 299 of the Code. The prosecution witnesses 1 to 10 are reported to have been already examined and their examinations in chief in case of their death or disability or incapability of attending the court were to be read against the present petitioner/accused after his appearance at the trial. The petitioner/accused has admitted the evidence of all the recorded prosecution witnesses and, as such, the said witnesses cannot be recalled at the discretion of the prosecution. The provisions of Section 299 of the Code are in the form of an exception to the general rule that evidence needs to be recorded in the presence of the accused or his legal representative.

14. This Court in its opinion is forfeited with the law laid down by this Court in “*Sonaullah Naik Vs. State*” decided on 10.12.2012 (2013)2 JKJ 403, in which under similar circumstances this Court has held that when an absconding accused subsequently surrenders and waives his right to cross-examine witnesses whose statements were recorded under Section 512 Cr.P.C, those statements are admissible

and complete for trial purposes, eliminating the need for fresh examination of witnesses.

15. The contention of the prosecution that a separate trial needs to be conducted against the petitioner/accused is unwarranted. The prosecution in the trial case is not justified to recall already examined witnesses whose testimonies already recorded in the absence of the petitioner have been admitted by the latter.

16. For the forgoing discussion, the impugned order dated 17.09.2025 passed by the learned Trial Court is set aside. The learned Trial Court is directed to proceed further on the trial of the case in an expeditious manner.

17. The interim order dated 15.10.2025 passed on this petition is vacated.

18. *Disposed of.*

Bail App No. 13/2026

1. Through the medium of the instant application filed in terms of provisions of Section 483 of the BNSS, bail on behalf of the petitioner/Accused in case FIR No. 119/2022 under Sections 8/15, 29 of NDPS Act of Police Station, Kulgam has been sought on the merits of the case as well as on humanitarian grounds. It has been inter-alia pleaded in the application that he has been facing detention in the case FIR as an under trial since 04.03.2025. That the final report/chargesheet in the case FIR came to be filed against him in his absence, with the initiation of proceedings in terms of provisions of Section 299 of the Code against him. That subsequently, upon his surrender at the trial of the case, he admitted the evidence of

prosecution witnesses 1 to 10 who had already been examined in the case by the prosecution, as he felt no necessity for cross-examining the said already examined witnesses who had already been appropriately cross-examined by the learned counsel for the co-accused. That he filed a formal application in that behalf. That simultaneously, the prosecution also filed an application before the trial court seeking recalling of the already examined witnesses to his extent. That both the applications filed by him as well as the prosecution were resisted by each other, and the learned trial court disposed of both the applications through a common order dated 17.09.2025, while rejecting his application and allowing the application of the prosecution.

That aggrieved by the said order dated 17.09.2025 of the learned trial court, he assailed the said order through a petition bearing No. CRM(M) 640/2025 before this Court so as to prevent procedural illegality, without any intention to prolong the trial of the case. That this Court has stayed the further proceedings in the said case. That his continued detention despite the stay of trial proceedings has resulted in his punitive detention. That it is well settled that prolonged incarceration, particularly when the trial itself is stayed and is not likely to conclude in the near future, is violative of Articles 14 & 21 of the Constitution of India. That he is deeply rooted in the society having a fixed place of residence, as such, there is no likelihood of his absconding or tampering with the prosecution evidence. That this Court, in exercise of its powers under Section 483 of the BNSS read with Articles 226 & 227 of the Constitution of

India, is fully empowered to grant bail in order to secure the ends of justice and to prevent the abuse of the process of law. That he is of the age of 58 years and is presently lodged in the Central Jail, Kot Bhalwal, Jammu. That he has been suffering from serious ailments, including a heart rhythm disorder, and is in a deteriorating medical condition, which is clear from the copies of medical reports enclosed with the application as Annexure II. That his earlier medical records issued by the SKIMS Soura reveal that he is a chronic cardiac patient with approximately 20% cardiac functioning and has been advised urgent surgical intervention. That after his removal to Central Jail, Kot Bhalwal, Jammu, he has not been receiving the required specialized treatment.

2. The respondent has resisted the instant application through the memo of objections filed by the learned counsel Mr. Zahid Qais Noor, learned Government Advocate, on the grounds that the petitioner/Accused is involved in the offences punishable under Sections 8/21, 29 of the NDPS Act in relation to a commercial quantity, as a quantity of 281.5 kilograms of Poppy Straw came to be seized in the case from his possession and the possession of co-accused, Suhail Ahmad Bhat and Showkat Ahmad Naik. That the trial of the case is going on and the petitioner stands formally charged for the commission of the aforesaid offences. That the petitioner fled away from the spot of occurrence, whereafter he went absconding, which led to the filing of the chargesheet in the case in his absence. That upon his production at the trial, he filed an application before the learned trial court admitting the statements of

the already examined prosecution witnesses, which was not allowed by the learned trial court as the prosecution had also filed an application before the trial court seeking the recalling of the already examined witnesses for their fresh examination to the extent of the petitioner/Accused. That the learned trial court, through order dated 17.09.2025 dismissed the application of the petitioner/Accused while allowing the application of the prosecution.

That the petitioner assailed the said order of the learned trial court before this Court and the trial proceedings stand stayed through an interim order passed on the said petition. That the prosecution/UT is not responsible for delay in trial which has been occasioned by the petitioner himself by filing a petition before this Court. That bar in terms of Section 37 of the NDPS Act is attracted in the case of the petitioner who cannot claim bail. That otherwise also the petitioner does not seem to be entitled to bail for the commission of highly anti-social and non-bailable offences relating to trafficking in Narcotic Drugs and Psychotropic Substances having lethal effect on the society, especially the younger generation. That the petitioner/Accused upon his surrender at the trial of the case was initially granted short term bail on 28.05.2025 by the learned trial court.

3. I have heard the learned counsel for the parties, who reiterated their stands taken in the application and the memo of objections, respectively.
4. The learned counsel for the petitioner submitted that the petitioner/Accused is entitled to be admitted to bail in the case both

on the merits as well as on humanitarian grounds. That none of the prosecution witnesses already examined and whose evidence has been admitted by the petitioner, have not incriminated the petitioner, which is the reason for the prosecution who intends to seek the recalling of the witnesses to improve their case.

5. He further contended that, without prejudice to his right to get bail on merits, he is also entitled to be enlarged on bail on exclusive humanitarian grounds, as he is a documented case of Hypertension (HTN) and Dilated Cardiomyopathy (DCM) with a history of syncope. That his current Ejection Fraction (EF) is 20%, indicating severe cardiac dysfunction. That he has been advised to undergo implantation of Cardiac Resynchronization Therapy with Defibrillator (CRT-D).
6. Learned counsel for the respondent/UT, however, controverted the arguments of the counsel for the petitioner/Accused and submitted that the health condition of the petitioner is being monitored and taken care of by the jail authorities. He further submitted that nothing serious has been reported regarding his health condition.
7. I have perused the instant bail application, the memo of objections, and the copies of the documents enclosed with the both. I have accorded my thoughtful consideration to the rival arguments advanced on both the sides.
8. Keeping in view the aforementioned perusal and consideration, this Court is of the opinion that, it may meet the ends of justice, in case the petitioner/Accused is temporarily admitted to a short term bail on exclusive humanitarian grounds so as to enable him to get himself

treated for his underlying heart ailment. He is reported to be a documented case of Hypertension (HTN) and Dilated Cardiomyopathy (DCM) with a history of syncope. That his current Ejection Fraction (EF) is 20%, indicating severe cardiac dysfunction. That he has been advised to undergo implantation of Cardiac Resynchronization Therapy with Defibrillator (CRT-D).

9. This Court cannot consider the bail of the petitioner/Accused on the merits of the case, as he is reported to be involved in offences under NDPS already charged against him relating to commercial quantity. He has to approach the trial court in the first instance seeking bail on merits of the case.

10. This Court can derive its authority from the provisions of the Section 483 of the BNSS read with the provisions of Article 21 of the Constitution, to address an eventuality, like the present one and pass the appropriate orders regarding temporary bail subject to some stringent conditions, under exceptional and compelling circumstances. After all, a health issue even of a detinue is of paramount consideration. All under trial and convicts have their fundamental right to claim proper medical care and treatment. However, the conditions viz. gravity of the offences charged against an accused, likelihood of his absconding at the trial and influencing the prosecution witnesses, impact of the crime charged against the accused on the society and State shall weigh the consideration of a court while overlooking the statutory bars. When bail is to be considered on humanitarian grounds, the merits of the case do not apply. The basic power to grant bail is derived from the procedural

law i.e. BNSS/ CrPC and the limitations on the power of a court imposed either by the procedural law or any other special statute, can under some compelling circumstances be read with the relevant provisions of the Constitution and some extra-ordinary provisions itself contained in the procedural law.

Otherwise while considering a bail under Section 483 BNSS in a routine manner, the statutory restrictions/limitations as laid down under Section 437 of the Code (corresponding to Section 480 BNSS) have also to be considered.

11. In its opinion this court is fortified with an authoritative judgment of the Hon'ble Karnataka High Court cited as "*Syed Abdul Ala vs Narcotic Control Bureau*", South, 2003 Cri.L.J 999 (Kar) decided on 17 December, 2002 wherein it has been authoritatively laid down that High Court under Section 439 of the Code of Criminal Procedure 1973 (corresponding to Section 483 of BNSS) is not powerless to consider bail on humanitarian grounds notwithstanding the restrictions imposed by section 37 of the NDPS Act. It has been held in the case concerned that provisions of Section 37 of the NDPS Act apply where bail is to be considered on merits. It has been agitated before the Hon'ble Court in the case that power to grant bail is basically derived from Code of Criminal Procedure and not from the NDPS Act and the latter only qualifies the power of the court vested under the code. It was held that provisions of Section 37 of NDPS Act do not clamp or cap powers of the High Court to grant bail under section 439 of the Code in its entirety. It is profitable to reproduce paras 9 and 10 of the judgment as under:-

“9. The provisions of Section 37 of the NDPS Act make a drastic departure from the conventional canons of burden of proof of prima facie case against the accused on the prosecution even at the stage of bail. In respect of the offences under the NDPS Act, the onus is on the accused to prove the innocence/non-complicity in order to secure bail. The restrictions in Section 37 relates to prima-facie material regarding the guilt of the accused. The powers of High Court to grant bail under Section 439 are quite wide and discretionary. Notwithstanding a prima facie case of guilt, under exceptional circumstances, the High Court in its discretion can grant bail. The embargo placed under Section 37 of the NDPS Act operates only when the Court is considering the bail application on merits. Thus, the provisions of Section 37 do not clamp or cap the powers of High Court to grant bail under Section 439 in its entirety. In other words Section 37 operates only as partial eclipse on the powers of the High Court. While deciding the application on merits with reference to prima facie material of guilt then only the provisions of Section 37 operate and they have to be read with the provisions of Section 439 of the Cr. P.C. When the bail is to be granted on other extenuating circumstances or humanitarian ground like the medical ground, the powers of the High Court under Section 439 are not curtailed. The provisions of Section 37 do not operate as a blanket ban on the powers of the High Court under Section 439 of the Cr. P.C.

10. On careful reading of the decisions of the Supreme Court in Kishan Lal's case, I find that there is no ratio laid down to the effect declaring that Section 37 of the NDPS Act, operates as a total blanket ban on the powers of High Court under Section 439 of the Cr. P.C. In the present case, the accused is seeking bail on medical grounds and the Court is considering the case of the petitioner de hors, prima facie material of guilt placed by the prosecution. On humanitarian considerations, the powers of High Court under Section 439 of the Cr. P.C., to grant bail is not eroded or affected by the provisions of Section 37 of the NDPS Act.”

12. In *“Jasvinder Singh Vs State of J&K” B.A No: 156/2019 decided on 12.04.2021* bail on humanitarian grounds (medical grounds) was granted by this Court to an accused who was suffering from diabetes, which had substantially affected his eye sight as per the medical records brought to the notice of the Court. It was authoritatively held in the case that the Sec 37 of the NDPS Act only prescribes the limitations on the release of a person on bail. That the powers to grant bail stand vested with the High Court under Section 439 of the Code of Criminal Procedure. That Section 37 of the NDPS Act, comes into play only when bail of a person/accused of an offence involving commercial quantity of a contraband is being considered on merits and the limitations contained therein would not apply when bail is to be granted on humanitarian grounds like medical ground. In such cases the powers of the High Court U/s 439 of the Cr.P.C are not curtailed. Thus the provisions contained under Section 37 of the NDPS Act do not act as a blanket ban on the powers of the High Court U/s 439 of the Cr.P.C.
13. It is a settled legal position that basic human rights cannot be denied to a person regardless of the allegations of the involvement against him. Refusing to grant temporary bail on exclusive health grounds may sometimes endanger his life.
14. For the forgoing discussion, this application is allowed for grant of temporary bail in favour of the petitioner/Accused on exclusive humanitarian grounds for a period of 45 days with effect from the date of his release from the jail so as to enable him to have his medical treatment and especially to undergo advised Cardiac Surgery at the

hospital of his own chose. However, this order shall be subject to following terms and conditions that:

- i. The petitioner/accused shall furnish surety and personal bail bonds to the tune of ₹1.00 lac each respectively to the satisfaction of learned trial court i.e. Court of Principal Sessions Judge, Kulgam and the Superintendent of Jail concerned;
- ii. the petitioner shall immediately after the release from the jail in pursuance of this order and without wasting any time ensure his medical treatment/surgery;
- iii. The petitioner shall surrender before learned trial court on 46th day of his release from the jail and, in case, such date falls a holiday, on the next working day and;
- iv. the petitioner/accused shall not cause any inducement, threat or undue influence on any of the unexamined prosecution witnesses so as to dissuade them from giving their statements before learned trial court;

15.It is needless to mention that learned trial court shall be at liberty to proceed under the provisions of Sections 491 and 492 of BNSS, in case of absconding at the trial of the petitioner/accused beyond the bail period.

16.In case, the requisite surety/bail bonds are furnished to the satisfaction of learned trial court, a release order shall go from the learned trial court directing the Superintendent, Central Jail, Kot Bhalwal, Jammu to release the petitioner/accused from custody after obtaining the requisite personal bond to the tune of ₹1.00 lac from him.

17. A copy of this order shall be forwarded to the learned trial court for information and compliance.

18. Disposed of.

**(MOHD YOUSUF WANI)
JUDGE**

SRINAGAR
03.03.2026
ARIF

Whether the order is speaking? Yes
Whether the order is reportable in law journal? Yes

