

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 105/2023 c/w
CRM(M) No. 334/2023

Basharat Iqbal and others

.... Petitioner/Appellant(s)

Through:- Mr. Waqar Hussain, Advocate vice
Mr. A.M. Malik, Advocate.

V/s

UT of J&K and another

.....Respondent(s)

Through:- Mr. Eishaan Dadhichi, G.A.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

31.05.2025

Bail App No. 105/2023

01. The applicants seek grant of bail in case FIR No. 0036/2023 dated 10.04.2023, registered for offences under Sections 341, 323, 147, 354-B, 382, 504, and 506 of the Indian Penal Code with the Police Station, Gursai.

02. The FIR was lodged by Shahnaz Akhter, wife of applicant No. 1, alleging that on 09.04.2023, applicant No. 1 was brutally assaulted by the husband and relatives of complainant, causing serious injuries. Medical records, photographs, and other material evidence have been placed on record to substantiate the assault on applicant No. 1, who was initially admitted to Sub-District Hospital, Mendhar, and subsequently referred to Government Medical College, Rajouri, due to the severity of head injuries caused by the use of sharp-edged weapons.

03. The contention of the applicants is that in retaliation to FIR No. 0036/2023, a counter FIR bearing No. 0039/2023 dated 12.04.2023 was lodged by complainant, Mst. Rubia Anjum alias Rubya Anjum, against the

applicants, stating an incident that occurred on 09.04.2023. The said FIR, according to the applicants, is frivolous and has been registered with a *mala fide* intent to pressurize them into withdrawing the earlier FIR.

04. In the status report filed by the respondents, it is submitted that during the course of investigation, the Investigating Officer visited the spot, prepared a site plan, and recorded statements of witnesses under Section 161 Cr.P.C. Based on the evidence collected, offences under Sections 341, 323, 336, 504, and 506 of the IPC were found to be made out against four accused persons, namely: Mohd. Shabir S/o Mohd. Hussain (applicant No. 6), Abdul Aziz S/o Gulab Din (applicant No. 12), Shokit Hussain S/o Mir Mohd. (applicant No. 7), and Mohd. Jhangir S/o Mohd. Akbar (applicant No. 5), all residents of village Gursai. Therefore, a charge-sheet was presented before the Court of learned JMJC, Mendhar, on 11.07.2023.

05. It is further stated that based on the statements of the eyewitnesses recorded under Section 161 Cr.P.C., no offence was found to be established against the remaining accused persons, namely: Basharat Iqbal S/o Mohd. Shabir (applicant No. 1), Basharat Hussain S/o Sh. Mohd. Bashir (applicant No. 2); Javed Iqbal, S/o Sh. Mohd. Jahangir (applicant No. 3), Iftar Hussain, S/o Mir Mohd. (applicant No. 4); Mohd. Rashid S/o Ali Akbar (applicant No. 8); Mohd. Bashir S/o Ali Akbar (applicant No. 9); Nasar Ahmed S/o Mohd. Shabir (applicant No. 10); and Zafar Iqbal S/o Abdul Aziz (applicant No. 11) (erroneously mentioned as Mohd. Zaffar in the FIR). Their names were accordingly dropped from the case during the course of investigation.

06. The applicants were admitted to interim bail on 19.04.2023. On the said date, this Court, while issuing notice to the respondents for filing objections,

directed that, in the meantime, if the applicants were arrested, they would be released on bail subject to certain terms and conditions. This interim order was made subject to objections from the respondents.

07. The Hon'ble Apex Court in '**Gurbaksh Singh Sibbia vs. State of Punjab**', (1980) SCC (Cri) 465, laid down the following parameters for grant of bail:

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

08. Similarly, in '**Sanjay Chandra vs. CBI**', (2012) 1 SCC 40, the Hon'ble Supreme Court reiterated the principles governing the grant of bail in the following terms:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

09. Learned counsel for the applicants submits that applicants No. 5, 6, 7, and 12 have complied with all the conditions imposed while granting interim bail in anticipation of arrest vide order dated 19.04.2023 and have been consistently appearing before the trial Court.

10. In view of the aforesaid, the bail application of applicants No. 1 to 4 and 8 to 11 is dismissed, while the interim bail granted vide order dated 19.04.2023 to applicants No. 5, 6, 7, and 12 is made absolute.

11. The bail application shall stand **disposed of**.

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On request of learned counsel for the petitioner, adjourned.

List on 08.07.2025.

Meanwhile, latest status report be filed.

(Sindhu Sharma)
Judge

Jammu:

31.05.2025

Vishal Khajuria