

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

Case:-Bail App No.136/2025

c/w

Bail App No.120/2025

Reserved on: 17.11.2025

Date of pronouncement:28.11.2025

Uploaded on : 28.11.2025

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

Judgment

Bail App No.136/2025

Muninder Singh @ Sonu, Aged 40
years, S/O Saroop Singh R/O GTB
Nagar, Channi Rama, Jammu.
A/P lodged at District Jail Kathua
through his sister Kiran Kour, Aged
45 years, R/O GTB Nagar, Channi
Rama, Jammu

.... **Petitioner(s)**

Through:- Mr. Supreet Singh Johal, Advocate

V/s

1. UT of J&K through
Commissioner/Secretary,
Home Department, Civil
Secretariat, Jammu.
2. Superintendent, District Jail,
Kathua.
3. Station House Officer, Police
Station, Samba.

.....**Respondent(s)**

Through:- Mr. Vishal Bharti, Dy. AG.

Bail App No.120/2025

Rajinder Singh, Aged 48 years, S/O
S. Surinder Singh R/O Chakshian,
Tehsil R. S. Pura, District Jammu;
A/P lodged at District Jail Kathua
through his father S. Surinder Singh,

Aged 71 years, R/O Chakshian,
Tehsil R. S. Pura, District Jammu.

.... **Petitioner(s)**

Through:- Mr. Supreet Singh Johal, Advocate

V/s

1. UT of J&K through
Commissioner/Secretary,
Home Department, Civil
Secretariat, Jammu.
2. Superintendent, District Jail,
Kathua.
3. Station House Officer, Police
Station, Samba.

.....**Respondent(s)**

Through:- Mr. Vishal Bharti, Dy. AG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Through the medium of instant petitions filed under Section 482 of the BNSS 2023, petitioners seek bail in a criminal case titled 'UT of J&K Vs. Sarita Devi &Ors.' subjudice before the Court of learned Principal Sessions Judge, Samba, arising out of FIR No.224/2021 under Sections 370, 363-A, 120-B, 34 IPC registered at Police Station, Samba.

02. Since both the petitions arise out of the same case involving common questions of facts and law, it is proposed to dispose of the same by this common order.

03. Both the petitioners pleading innocence have alleged that they have been falsely implicated in the case by the investigating agency; that they were arrested soon after the registration of the case and have been facing incarceration for more than 3 ½ years; that just four prosecution witnesses have been examined till date out of 29 prosecution witnesses after the

framing of charges by the trial court way back on 03.05.2022; that the witnesses examined by the prosecution have also not made any incriminating statements against the petitioners; that petitioner, Muninder Singh @ Sonu, is an auto rickshaw driver whereas petitioner, Rajinder Singh, who is a Policeman, is a cancer patient.

04. It has been further pleaded that the track with which the criminal trial has taken till now is a clear indication of an acquittal in favour of the applicants; that the learned trial court while passing the order dated 04.04.2025 had failed to appreciate the true principles of law as enunciated by the Apex Court in plethora of judgments; that the learned trial court has failed to appreciate that there is no reverse presumption of guilt against the applicants in respect of the offences alleged against them as is enshrined in some special statutes like that of the NDPS Act, MACOCA, POCSO Act and SC/ST Act are not applicable to the case of the applicants; that it is simply a case where the applicants ought to be presumed to be innocent until proven guilty; that the learned trial court, on the contrary, has proceeded with an assumption that the applicants are guilty which has turned the settled position of criminal law on its head by rejection of the applicants' bail; that albeit the applicants had on earlier occasions also approached this Hon'ble Court vide the bail application moved in the year 2022 which came to be rejected primarily on the ground that the trial was at its infancy, the circumstances of grant of bail in favour of the applicants afresh have materially changed to the extent

that as many as four witnesses who have now been examined, being the most material witnesses have not sided with the case of the prosecution.

05. Furthermore, close to four years have now been lapsed since the initial arrest of the applicants; that otherwise also, it is settled position of law that the accused has to be presumed as innocent and not guilty until and unless he is convicted after conviction of trial. This Constitutional guarantee available to the accused cannot be whittled down in any manner just because of the charge have been framed against them as parameters of charge stand completely at a different pedestal to that of grant of bail. Whereas, at the stage of framing of charge, only weighing of probabilities is to be done, multifarious benefits such as chances of acquittal, presumption of innocence, delay in trial and the like are available to the accused at the stage of trial of bail. These parameters weigh in favour of the applicants; that the learned trial court has passed order dated 04.04.2025 whereby the bail applications of the applicants have been rejected without application of mind.

06. The learned trial court has failed to even reiterate much less consider the arguments advanced by the learned counsel for the applicants which in-depth dealt with the infirmities in the charge-sheet as well as the statements already recorded so as to in any manner convict the applicant; that otherwise too, perusal of the charge-sheet would reveal that the applicants have solely been roped in the same by invoking Section 120-B of the IPC, so as to make them accomplices of the alleged crime by the

accused persons Sarita Devi and Neha Rotra from whom the minor child Ajay Kumar allegedly had been recovered.

07. The petitioners have finally prayed that they be admitted to bail so that they are able to prepare their defense to face the trial.

08. Objections stand filed in both the cases stating therein that the petitions are not maintainable as the petitioners have committed the offences under Sections 370, 363-A, 120-B, 34 IPC which are heinous in nature, non-bailable and punishable with life imprisonment. As per the evidence, investigation and other circumstances, offences under Sections 370, 363-A, 120-B, 34 IPC have been proved against the accused persons namely (1) Sarita Devi @ Anjali D/O Kewal Singh R/O Suhagpur, Tehsil Arnia Jammu (2) Neha Rotra D/O Joginder Pal R/O Manja Tehsil Kathua, both A/P Malik Market Bilal Colony Jammu (3) Kamalpreet S/O Harbans Lal R/O Shian Check R.S. Pura Jammu (4) Muninder Singh @ Sonu S/O Sarop Singh R/O G.T.B. Nagar, Channi Rama Jammu (5) Anil Kumar S/O Birsingh R/O Shian Chack R.S. Pura and (6) Rajinder Singh S/O Surinder Singh R/O Shian Chack R.S. Pura. Accused persons have been arrested in the instant case and all are under judicial remand. Accused No.06 namely Rajinder Singh, one of the petitioners, was initially absconding since the registration of the said case.

09. It is further stated in the objections that the Hon'ble Apex Court of India has underlined the guidelines for Criminal Courts of the Country and laid down principles to be taken into consideration at the time of grant of bail. These principles have been embodied in 'Kalyan Chandra Sarkar

Versus Rajesh Ranjan alias Papu Yadav and another' (2004) 7 SCC 528; 'State Vs Captain Jagjit Singh' AIR 1962 (SC) 253; & 'Gurcharan Singh Vs State Delhi Administration' AIR 1978 (SC) 179. All these guidelines have distilled in the Judgment of Hon'ble Supreme Court in 'Jayendra Saraswati Swamigal Vs State of Tamil Nadu' AIR 2005 (SC) 716 and basically they are the nature and seriousness of the offences, character of evidence, circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the witnesses being tampered with and above all, larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of each case. The allegations against the petitioners are serious; any concession of bail in favour of the petitioners would not be in the interest of the society at large. It is respectfully prayed that Bail may be refused as there is likelihood of the applicants interfering with the witnesses for the prosecution or otherwise polluting the process of justice. The present Bail Applications are, thus, required to be dismissed.

10. Learned counsel for the petitioners has argued that petitioner, Muninder Singh @ Sonu, is an auto rickshaw driver and is dependent on his job to sustain his family and that even if his auto rickshaw had been used on being hired by one of the main accused-Sarita Devi, he cannot be stated to be involved in the commission of the offence and that his family has been suffering due to him being in the jail being the only earning hand in the family; that the petitioner-Rajinder Singh is a policeman and a

cancer patient, alleged to be in contact with one of the main accused Sarita Devi, who is stated to have come into his contact at Police Station Bishnah where he was posted and this acquaintance in itself does not reach to the conclusion that the petitioner was involved in the commission of offences committed by the said Sarita Devi; that petitioners having been arrested in the case soon after registration of the case, have undergone more than 3 ½ years of detention during the period of investigation as well as trial and as such, in view of the provision of Section 479 of BNSS on having undergone 1/3rd of the total punishment provided for the offences are entitled to be admitted to bail in view of the Apex Court judgment passed in **Writ Petition (Civil) No.406/2013 decided on 23.08.2024** in case titled **Inhuman Conditions in 1382 Prisons**.

11. He has further argued that there was nothing on record to substantiate as to what really was the criminal conspiracy alleged and there was no evidence to show meeting of minds of the applicants/petitioners with any of the co-accused persons; that the trial court had failed to even appreciate muchless consider the arguments advanced on behalf of the applicants with the infirmities in the charge-sheet as well as the statements already recorded so as to in any manner convict the petitioners; that otherwise also, perusal of the charge-sheet would reveal that the applicants have solely been roped in the same by invoking Section 120-B of IPC so as to make them accomplices of the

alleged crime by the accused persons-Sarita Devi and Neha Rotra from whom the minor child namely Ajay Kumar allegedly had been recovered.

12. Learned counsel for the petitioners further argued that chance of the acquittal of the applicants clearly outweigh those of their conviction, as such, they seek the indulgence of this court for grant of bail on the ground of their clean antecedents, which are substantiated not only from the fact that they have been roped in criminal case muchless convicted therein prior to the registration of the present FIR pending trial, as well as the fact that they had been granted short term bails on previous occasions also; that there is no chance of tampering of evidence as the same is on the record by way of charge-sheet presented before the trial court as well as there is no chance of flight of the petitioners from the criminal trial as their families are settled in Jammu and are dependent on them; that they by no means would threaten or coerce the witnesses and that they are not in a position to influence any of the witnesses having no control over them. It was finally prayed that both the petitioners be admitted to bail having undergone 1/3rd of the sentence provided for the offences, of which, they were charged.

13. The learned counsel for the respondents, *ex adverso*, while reiterating the pleadings made in the objections, argued that both the petitioners are alleged to have committed offences punishable under Sections 370, 363-A, 120-B, 34 IPC as they were found to have conspired and abetted the commission of these offences, which were committed by the co-accused Sarita Devi and Neha Rotra, as they had kidnapped a

minor child from near Chichi Mata temple in Samba District and that the child was transported to a place in Jammu, initially on a motor-cycle owned by one of the petitioners, Rajinder Singh, and driven by one of the accused, Anil Kumar, upto Kunjwani, wherefrom, the child was transported in the three-wheeler driven by one of the petitioners, Muninder Singh @ Sonu. It was alleged that both the petitioners have actively participated after entering into a criminal conspiracy to kidnap a child and had helped the main accused in the commission of the offences by providing logistic support. and finally it was prayed that the bail applications being misconceived be rejected.

14. Heard learned counsel for the sides and also gone through the relevant provisions of law on the subject.

15. The main contention advanced by the learned counsel for the petitioners is that the petitioners are entitled to be admitted to bail having undergone 1/3rd of the punishment provided for the offences in terms of Section 479 of BNSS. The other grounds, which have been urged by the learned counsel for the petitioners, such as, antecedents of the petitioners being an auto rickshaw driver and a policeman, the health condition of the petitioner- Rajinder Singh, examination of just four witnesses during the trial out of 29 prosecution witnesses cited in the charge-sheet.

16. Both the petitioners have been charged of the commission of offences punishable under Sections 370, 363-A and 120-B IPC. The relevant parts of these Sections are extracted and reproduced as follows:

“370. Trafficking of person.—

(1) to (3) XXXXXXXXXXXXXXXXXX

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) to (7) XXXXXXXXXXXXXXXXXX”

“363-A. Kidnapping or maiming a minor for purposes of begging.—

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) to (4) XXXXXXXXXXXXXXXXXX”

“120-B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) XXXXXXXXXX.”

17. It will be profitable to reproduce Section 479 of BNSS as under:-

“479. Maximum period for which under-trial prisoner can be detained.- (1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more

than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.”

18. Section 479 of BNSS, 2023 provides for maximum period for which under-trial prisoner can be detained. It provides that in case any person, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period exceeding upto one third of the maximum period of imprisonment specified for such offence under that law, being first time offender, is entitled to be released by the court on bail. Even if it is accepted that the petitioners are first time offenders, however, they have been charged of more than one offences punishable under Sections 370, 363-A and 120-B IPC.

19. The offence with regard to trafficking of a minor person is punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine under Section 370 IPC. The offence under Section

363-A with regard to the kidnapping is, however, punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The offence under Section 120-B with regard to criminal conspiracy shall be punishable in the same manner as the main offence. Petitioners have been charged under Sections 370 and 120-B IPC, the imprisonment provided for the aforesaid offences is not to be less than ten years, but which may extend to imprisonment for life.

20. The provisions of Section 479 of BNSS is not applicable to those offences, which are punishable with imprisonment of life or death as contained in sub-section (1) of Section 479 BNSS and also to all those cases wherein accused has been facing charge in the trial for more than one offence in terms of sub-section (2) of this Section, which provides, where an investigation, inquiry or trial in more than one offence or in multiple cases pending against a person, he shall not be released on bail by the Court, therefore, on both the grounds, the plea with regard to release the petitioners having undergone 1/3rd of the punishment is misconceived and is liable to be rejected. The star submission made by learned counsel on behalf of the petitioners is, thus, misconceived and is not maintainable.

21. The other grounds with regard to the difficulties faced by the petitioners, either on health or in view of their jobs, are not such, which may be taken into account for grant of bail at this stage of the trial. The contention made on behalf of the petitioners that just four witnesses have

been examined out of 29 prosecution witnesses during the period of trial, but this ground also seems to be shaky in view of the fact that the delay is mainly attributable to the absence, absconding or seeking adjournments on behalf of the defence, as such, this ground is not available to the petitioners. The petitioners in view of their health conditions or due to some social obligations were granted short/interim bail by the trial court on earlier occasions and they can again approach the trial court for those reliefs in case such exigency occurs.

22. For the aforesaid reasons and observations made hereinabove, no case is made out for indulgence of this Court to grant bail in favour of the petitioners. Before parting with this order, it is impressed upon the trial Court to expedite the trial of the accused, having regard to their right of speedy trial.

23. Both the Bail Applications along with connected application(s) are, thus, **dismissed**. Copies of this judgment be placed across both the files separately, besides forwarding one copy to the trial court, for information.

(M A CHOWDHARY)
JUDGE

JAMMU
28.11.2025
Narinder.

Whether order is speaking? **Yes**
Whether order is reportable? **Yes**