

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)

Bail App No. 130/2025

Reserved on: 15.12.2025

Pronounced on: 20.12.2025

Uploaded on: 20.12.2025

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

Ajay Kumar Gupta & Anr.

.....Appellant(s)/Applicant(s)

Through: Mr. Manpreet Singh Saini, Advocate.

Vs

..... Respondent(s)

U.T of J&K

Through: Mr. P. D. Singh, Dy. AG

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

01. Applicants, through the medium of the above titled application under Section 483 of BNSS, 2023, seek grant of bail in a case titled '*State of J&K Vs. Ajay Kumar Gupta & Anr.*', pending disposal before the 1st Additional Sessions Court, Jammu, arising out of a case, registered at Police Station Gangyal, Jammu vide FIR No. 89/2018, for commission of offences punishable under Sections 302/201/34 RPC.

02. From the perusal of the charge-sheet, facts of the case, shorn of minute details, are that on 11.10.2018, Samba Police received an information through reliable sources that one unidentified male dead body with injuries on neck caused by some sharp edged weapon, was found lying at Taloot Yard on Sumb Link road; that on the basis of this information, a case vide FIR No.368/2018 was registered at PS Samba; that during the course of investigation, IO got

conducted photography of the scene of crime, prepared the site plan, took dead body in police custody, seized blood stained soil, that polythene and lady salwar (Capri) in which the dead body was wrapped and one pair of chappal; that on 13.10.2018, one Ranjit Singh S/O Fakir Singh R/O Babliana along with some others approached Police Station concerned and identified the deceased as his brother Dalbir Singh @ Sunny S/O Fakir Singh R/O Babliana Tehsil and District Jammu; that the dead body was handed over to said Ranjit Singh for performing the last rites after conducting the post-mortem; that a Special Investigating Team (SIT) was constituted, who recorded statements of witnesses U/S 161 and 164-A CrPC, interrogated the suspect namely Ajay Kumar Gupta S/O Madan Lal Gupta R/O Gangyal.

03. On further investigation, it revealed that said deceased Dalbir Singh @ Sunny had illicit relations with one girl namely Shivani Gupta D/O Ajay Kumar Gupta, but was betrothed with one Kuldeep Mahajan R/O Jhiri and their marriage was fixed for 12.12.2018, but said Dalbir Singh @ Sunny, being jilted, was not happy with the said marriage; that on 10.10.2018 at about 1317 hrs, when the said Dalbir Singh @ Sunny entered the house of Ajay Kumar, and Ajay Kumar, with criminal intention to murder, attacked upon him with scissors, Kunda, Danda and iron rod; that after a while, Sushma Gupta W/O Ajay Kumar, Vishal Gupta S/O Ajay Kumar Gupta, Shivani came on spot and assaulted deceased with intention to kill him, loaded the dead body of the deceased during night hours in a vehicle after wrapping the head of the dead body with Salwar/Capri and dumped it at Taloot Yard; that they also threw the weapon of offence i.e. Kunda Danda and one Jute Bag somewhere on Sumb Road.

04. As the place of occurrence was under the jurisdiction of Police Station Gangyal, the investigation of the case was, accordingly, transferred to the Gangyal Police Station for further investigation, as such a case vide FIR No.89/2018 was registered at Police Station Gangyal for commission of offences punishable under Sections 302/201/34 RPC; that IO arrested accused Ajay Kumar Gupta on 10.11.2018, prepared the site plan of the place of occurrence and also arrested Shivani Gupta daughter, Sushma Gupta wife, and Vishal Gupta son of Ajay Kumar Gupta and the offences under Sections 302/201/34 RPC were found established against them. On completion of the investigation, vide order dated 10.07.2019, charges for offences u/s 307/201/34 RPC were framed against the accused persons by the Trial Court.

05. Applicants moved the trial court seeking bail, which was declined by the trial court, vide its order dated 12.07.2024.

06. Aggrieved of the decline of bail to the applicants by the trial court, they have filed the instant bail application, inter alia, on the grounds that the applicants were in continuous incarceration for over 6 years and out of 36 listed prosecution witnesses, only 10 PWs had been examined; that there are no eye witnesses or direct witnesses cited in the challan against the applicants and the other accused are already on bail; that applicants have been falsely implicated in the aforesaid case; that bail is the rule and jail is the exception; that the applicants are entitled to speedy trial, as such, they be admitted to bail.

07. Despite several opportunities, the respondents failed to file any reply/objections to the Bail Application and this is how, in the aforesaid background, the case is being considered.

08. Learned counsel for the applicants/accused argued that they being in continuous custody since their arrest in the year 2018, have suffered long incarceration, as against their right of speedy trial; that out of 36 prosecution witnesses, prosecution since 10.07.2019, when accused were chargesheeted could not examine even 50% of them. He further argued that whole of the prosecution case is based on circumstantial evidence and there cannot be any risk of tampering the evidence; that applicants are deep rooted in society and, thus, there is no risk of their absconding/evading their prosecution during trial, if they are admitted to bail. It was, finally, prayed that on the ground of long incarceration the applicants be admitted to bail. In support of his contentions, the learned counsel, has relied upon the judgments of the Apex court in the cases of **‘Union of India Vs. K. A. Najeeb’ (2021) 3 SCC 713**, **‘Indrani Pratim Mukherjee Vs. CBI & Anr.’ (2022 Legal Eagle (SC) 577** and **Criminal Appeal No.1525 of 2021** titled **‘Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya V. National Investigating Agency’**.

09. Non applicant, despite availing numerous opportunities, has not filed objections to the bail application. However, while opposing the prayer for grant of bail, learned counsel for the non applicant, vehemently argued that seven years incarceration cannot be a ground for grant of bail, in the present case as a precious human life is exterminated by the applicants; that the applicants, however, at the best, can pray for direction to the trial court for expeditious trial of the case before it; that the judgment relied upon by the applicants in the case of *K.A. Najeeb (supra)* is of no help to them as the same is as regards UAPA cases. He argued that applicants/accused being charged of the commission of

murder which is a heinous offence with gravity of punishment of death sentence or life imprisonment are not entitled to any concession of bail, as they may not face trial and make attempt to influence the prosecution witnesses yet to be examined, in order to tamper with the evidence, to thwart their conviction. Lastly, it is prayed that the applicants do not deserve any concession of this court and their bail application be dismissed forthwith.

10. Heard learned counsel for the parties at length, perused the scanned record received from the trial court and considered the matter.

11. The prosecution has cited as many as 36 prosecution witnesses in the case and as per record, even 50% of the prosecution witnesses have not been examined so far. From the list of witnesses, it is apparent that most of the witnesses are formal witnesses or with regard to the investigation of the case and the two eye-witnesses-Sunny Kumar and Sahil Gupta are stated to have been examined. The prosecution case is mainly based on circumstantial evidence. The applicant no.1 was arrested on 15.11.2018 whereas applicant no.2 was arrested on 16.11.2018 and continued to be in incarceration in the case for more than seven years. The trial of the case is going to take some more time and it is not going to be concluded within a short span of time given the number of unexamined prosecution witnesses.

12. Supreme Court in the case titled '**Union of India v. K. A. Najeeb**' reported in (2021) 3 SCC 713, while commenting upon the possibility of early completion of trial and extended incarceration held as under:

"Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the

threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

13. On the issue of long incarceration and uncertainty in early conclusion of trial in a murder case, Hon'ble the Supreme Court in the case titled '**Indrani Pratim Mukherjea Vs. Central Bureau of Investigation & Anr**' reported in 2022 *Legal Eagle (SC)* 577, whereby petitioner, an accused in a case under Section 302 IPC undergoing custody for 6 and ½ years, was enlarged on bail for her long incarceration on the ground that there was no possibility of completing the trial soon.

14. The Apex Court in Criminal Appeal No(s). 1525 of 2021, titled as Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya v. National Investigating Agency, for advancing arguments that deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India, and while deprivation of personal liberty for some period may be avoidable, but period of deprivation pending trial cannot be unduly long.

15. Having regard to the facts and circumstances of the case and in view of the fact of long incarceration of the applicants in the case for more than seven

years, there being no likelihood of early conclusion of the trial, and having regard to the law laid down by the Apex Court in the cases supra, this Court is of the considered opinion that the applicants/accused are entitled to be admitted to bail. The apprehension of the respondent-prosecution that the applicants, on being admitted to bail, may tamper with the prosecution evidence can be taken care of by imposing appropriate conditions while granting bail.

16. Viewed thus, the application is **allowed** and the applicants/accused are admitted to bail subject to the following conditions that they shall:

- (i) furnish bail and personal bonds to the tune of Rs.1,00,000/- each to the satisfaction of the trial court;
- (ii) not leave the territorial jurisdiction of this court without seeking prior permission from the trial court;
- (iii) not associate themselves with the prosecution witnesses or tamper with the prosecution evidence, in any manner, whatsoever; and
- (iv) attend the hearings of their case on each and every date of hearing without fail.

In case of contravention of any of the aforesaid conditions, the prosecution or the complainant can approach the trial court, seeking cancellation of the bail.

17. The Bail Application is thus disposed of as 'allowed'.

(M A CHOWDHARY)
JUDGE

Jammu
20.12.2025
Raj Kumar

Whether the order is reportable?: Yes