

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

(Through Virtual Mode)

Pronounced on: 19.08.2025

Bail Application No. 115/2024, CrLM No. 859/24

Rahat Hafiz and ors

...Petitioner(s)

Through: Mr. A.M Dar, Sr. Adv with Ms Mahjabeen, Adv.

vs.

**1.UT of J&K, through Principal Secretary to Govt.
(Home) Department Civil Sectt. Srinagar, & ors**

...Respondents.

Through: Mr. Sunil Sethi, Senior advocate,
Special Public Prosecutor.CORAM:**Hon'ble Mr. Justice Mohd. Yousuf Wani, Judge.**JUDGMENT

1. Through the medium of the instant petition filed under the provisions of Section 439 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the "Code" for short), corresponding to Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023, the petitioner has sought grant of bail in his favour in case FIR No. 82 of 2013 under sections 302, 364, 201, 120-B, 420 & 468 RPC of Police Station, Pir-Mitha, Jammu, on the main ground that he is the citizen of India and a domicile of Union Territory of J&K and, as such, within his rights to invoke the jurisdiction of this court for his enlargement on bail in the aforementioned case FIR No. 82 of 2013 of Police Station, Pir-

Mitha, Jammu. That he has been unjustly implicated in the aforesaid case FIR as the accusation against him is baseless. That he is an educated individual hailing from a respectable family of Jammu whose father is a prominent reputed Doctor in the region. That he has no criminal antecedents. That he stands involved in the murder of one lady namely Narjis Haji, when there is no credible evidence with the prosecution linking him to the alleged incident. That death of the lady is alleged to have occurred due to administration of poisonous substance namely Aluminium Phosphate. That the prosecution is banking only on circumstantial evidence so far his unjust involvement in the case is concerned. That the trial of the case is going on in the court of learned Additional Sessions Judge, Jammu (hereinafter referred to as the “trial court” for short). That the charge sheet includes list of 39 prosecution witnesses out of whom 9 witnesses are yet to be examined at the trial. That the testimonies of the witnesses so far recorded do not connect him with the alleged occurrence. That the statements of the witnesses recorded during investigation and also at the trial reflect numerous contradictions and discrepancies which undermine the credibility of the prosecution narrative. That the medical testimonies presented by the prosecution are equally contradictory and ambiguous. That he has been facing prolonged incarceration since 11 years, during which cumbrous trial period, the prosecution failed to lead any incriminating evidence against him. That extended period of his confinement combined with weak circumstantial evidence underscore the need for careful revaluation of the case and consequent consideration of his request for his bail. That his health has badly deteriorated during his last 11 years of continued incarceration, as indicated by the medical certificates attached

to the bail application. That right to liberty guaranteed under Article 21 of the Constitution of India is a valuable trust which cannot be allowed to be compromised. That the trial of the case is still incomplete with 8 to 10 witnesses yet to be examined, thus, indicative of the fact that legal process may take further time to reach its completion. That he had no alternative but to approach the learned trial court in the first instance seeking bail on all the grounds especially his long incarceration without completion of the trial. That the learned trial court rejected his application on the ground that he cannot claim bail on account of long incarceration from a trial court. That the prosecution case is wholly and solely based on circumstantial evidence which is imaginary and too weak to establish an unbreakable linking. That the Hon'ble Supreme Court of India has set a precedent for granting bail to an individual facing prolonged incarceration particularly when the prosecution fails to present a strong case. That his right to liberty and health have been severely compromised by his prolonged detention and as such the grant of bail in his favour is likely to restore his freedom and to allow him to seek medical treatment for his deteriorating health. That he is entitled to presumption of his innocence till proved guilty embodied under the cardinal principle of criminal jurisprudence. That he has no criminal antecedents at all and belongs to a respectable family. That he is sole bread earner of his family and in case he is made to suffer further incarceration, his entire family will starve for want of sustenance. That he shall abide by any condition that may be imposed by this court.

2. The instant bail petition has been resisted by the respondents on the grounds that same is not maintainable under law and

deserves outright rejection. That the petitioner after filing an application before the learned trial court in terms of provisions of Section 439 of the Code corresponding to Section 483 Bhartiya Nagarik Suraksha Sanhita and obtaining of an interim bail during the pendency of the said application, has again invoked the same provisions of law after the dismissal of the earlier application by the learned trial court vide its order dated 04.04.2024. That the petitioner is facing charge of murder of the deceased Narjis Haji and the prosecution witnesses examined at the trial have supported the charge against him. That the contention of the petitioner that he has been languishing in jail since last 11 year is not true as he has been getting interim bails on health grounds which concessions were misused by him by remaining absent at the trial. That the investigating officer during investigation of the case collected evidence to the effect that the petitioner after hatching conspiracy with the co-accused administered poison to deceased under the motive of grabbing an amount of Rs.10/- lacs which he had received from her on account of sale of plot to her. That all the prosecution witnesses recorded at the trial have deposed against the petitioner and the remaining witnesses being relevant are required to be examined. That the petitioner is facing charge of murder and that too of a lady who was of his mother's age. That the petitioner misused the concession of the interim bail granted in his favour by the learned trial court by remaining absent at the trial which fact constrained the learned trial court to cancel the said concession in his favour and to issue non-bailable warrant of arrest against him. That the petitioner never complained of severe health problem and the routine day to day medical checkups were conducted of him within the jail premises by the jail medical staff. That

there is every apprehension of misusing the concession of bail by him by tempering with the remaining witnesses and by absconding at the trial.

3. I have heard the learned counsel for the parties.

4. The learned counsel for the petitioner Mr. A. M Dar, Senior Advocate, while reiterating his stand taken in the bail petition submitted that the petitioner was falsely and frivolously implicated in the case FIR which is evident from the fact that the investigating agency during the investigation of the case has not connected him with the alleged offence. That petitioner was intentionally implicated in the case FIR for extraneous reasons. That there is no direct evidence at all connecting the petitioner with the alleged crime. The learned counsel submitted that notwithstanding the innocence of the petitioner and his being implicated in the case on false and frivolous grounds, he is otherwise entitled to grant of bail on account of his prolonged incarceration. The learned counsel submitted that the petitioner was arrested in the case on 13.12.2013 on the ground of suspicion and since then he has been languishing in the jail as under trial in the case FIR without completion of criminal trial. He submitted that long incarceration of the petitioner/accused with delay in completion of the trial tantamounts to the violation of his fundamental right to life and personal liberty guaranteed under Article 21 of the constitution of our country. He submitted that the petitioner is entitled to be granted bail on merits also as in view of the evidence of very weak contradictory and circumstantial nature adduced at the trial by the prosecution, there appears no reasonable ground of his involvement in the case. The

learned counsel further submitted that the present bail application filed by the petitioner while invoking the powers of this Court under Section 439 of the Code is very well maintainable as after rejection of the bail by the learned trial court, the subsequent application will lie also under Section 439 of the Code. He submitted that petitioner was granted interim bail on health grounds by the learned trial court for a temporary period, which came to be cancelled on 27.07.2024. He also contended that all other co-accused have already been admitted to bail in the case FIR. Learned counsel further submitted that petitioner hails from a respectable family and has no criminal antecedents. That he shall abide by any condition that may be imposed by this court.

Learned Senior counsel submitted that petitioner prays for grant of bail in his favour mainly on account of his long incarceration of about 12 years without completion of the trial against him.

The learned senior Advocate in support of his arguments placed reliance on the authoritative judgments of the Hon'ble Supreme Court passed in *Indrani Pratim Mukerjea vs. Central Bureau of Investigation and anr*, SLP (Crl) No. 1627/2022 dated 18.05.2022; *Saudan Singh vs. State of Uttar Pradesh* (Crl) Appeal Nos. 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 334, 336, 325, 322, 323 & 324 of year 2022, arising out of SLPs (Crl) No.s 4033, 4635, 4634, 4636, 4213, 4638, 4643, 4642, 4849, 4641, 4396, 4847, 4844, 4848, 5472, 6928, 4639, 4332, 4640, 6449 of 2021, decided through common order dated 25.02.2022; *Neeraj vs. The State of Uttar Pradesh* SLP (crl) No. 11458/2022 dated 16.01.2023; *Hussainara Khatoon and ors vs. Home secretary, State of Bihar, Pattna*, Writ Pet

No. 57 of 1979 decided on 12.02.1979; Supreme Court Legal Aid Committee vs. Union of India (UOI) and ors writ petition (crl) No. 307 of 1993 decided on 07.10.1994; Umarmia vs. State of Gujrat Crl Appeal No. 1650 of 2011 decided on 01.02.2017; Union of India (UOI) vs. K.A Najeeb Crl Appeal No. 98 of 2021 decided on 01.02.2021 & Ashim vs. National Investigation Agency crl appeal No. 1525 of 2021 decided on 01.12.2021.

The learned counsel in support of his arguments also placed reliance on the judgments of this Court passed in “Manzoor Ahmad Mir vs. UT of J&K” bail app. No. 109/22 decided on 30.12.2022 and in Bansi Lal vs. UT of J&K or ors bail app. No. 30/2024 decided on 03.07.2024.

The learned Senior Advocate also placed reliance on a latest judgment of Hon’ble Apex Court titled Tapas Kumar Palit vs. State of Chhattisgarh (Crl Appeal No. 738/25) decided on 14.02.2025.

The learned senior advocate submitted that the Hon’ble Apex court has been pleased to grant bail to the appellants/accused in the relied upon cases who were facing trial in respect of cases for different periods ranging from 5 years to 10/15 years without completion of trial against them while observing that they have fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India which stands compromised due to their long incarceration without expeditious trial against them.

5. The learned special PP Mr. Sunil Sethi, Senior Advocate in rebuttal while reiterating his stand already taken in the written

objections submitted that the application filed before this court under section 439 of the Code is not maintainable because the same was filed during the operation of interim bail granted by the learned trial court before which the similar provisions of the Code were earlier invoked. He contended that the petitioner while approaching this court has observed the directions given by the Hon'ble Supreme Court in "Kusha Duruka vs. State of Odisha 2024 (2) SCC (Crl) 466, regarding furnishing of the details of all the pending and already filed bail applications in breach. That the petitioner-accused is facing charge for the offence of murder of a lady who was of the age of his mother namely Narjis Haji. That the motive behind the crime and the circumstances in which the petitioner-accused committed the crime in conspiracy with co-accused is gruesome. That the petitioner-accused even misused the concession of interim bail on the medical grounds owing to which fact he despite his being in custody since last more than 10 years does not deserve the concession of bail. That the trial in the criminal case against the petitioner and other co-accused is going on with active pace and the prosecution witnesses so far recorded at the trial have inculpated the petitioner. That there is concrete direct and documentary evidence establishing the guilt of the petitioner-accused. That there is every apprehension of the misusing of concession of bail by the petitioner-accused by tampering with the prosecution evidence yet to be recorded at the trial. That the petitioner has never complained of any health problem and he has been given the required treatment at the jail medical centre as and when required by him. That given severity of punishment carried by the offence U/s 302 IPC charged against the petitioner, there is every apprehension of his fleeing from justice and absconding at the

trial. The learned Special PP in support of his arguments placed reliance on the authoritative judgments cited as *Kusha Duruka vs. State of Ordisa* 2024 (2) SCC (Crl) 466; *Sudha Singh vs. State of UP* 2012 (2) SCC (Crl) 505; *Jadunath Singh vs. Arvind Kumar's & Anr* 2024 (3) SCC (Crl) 108; *State of Tamil Nadu vs. S.A Raja* 2005 (8) SCC 380 and *Vijay Madan Lal Choudhary & Ors vs. Union of India & Ors* 2020 (4) Crl. CC 126.

6. I have perused the instant application, the objections filed in rebuttal and the scanned copy of the trial court record, especially the evidence of the prosecution witnesses recorded at the trial.

I have also accorded in-depth consideration to the rival arguments advanced on both the sides.

7. The petitioner-accused is facing trial on the charge of murder of one lady Narjis Haji who is alleged to have been abducted by the petitioner-accused and his home servant Riyaz Ahmad co-accused on 12.12.2013, administered her poisonous substance and then abandoned her dead body in a forest area. After the culmination of the investigation in the case FIR No. 82/13 of police station Pir-metha Jammu, final report/challan came to be presented before the trial court against the petitioner-accused and three others. The accused including the petitioner came to be charged in the case vide order dated 13.06.2014 of the learned trial court. The petitioner-accused stands charged under sections 420, 468, 302, 364, 201 and 120-B RPC.

8. The prosecution evidence was called on the same date i.e 13.06.2014 when the accused persons including the present petitioner

pleaded not guilty and claimed to be tried. So the prosecution evidence is in the process of being recorded at the trial since long more than 11 years. The petitioner is reported to be facing detention in the case since about last 12 years.

9. As on the date of rejection of earlier regular bail application of the petitioner-accused by the learned trial court i.e 4.4.2024, out of 35 listed prosecution witnesses only 15 witnesses were left to be examined.

10. By the time some more witnesses are expected to have been recorded at the trial of the case but nevertheless the fact remains that trial of the case is likely to take some more time to conclude.

11. It has been submitted by the petitioner in his petition that he is not keeping good health and has developed severe health complications inside the jail. The learned counsel for the petitioner during his arguments *inter alia* submitted that petitioner was released only for a short interim period on health grounds and his interim bail was subsequently cancelled by order dated 27.07.2024.

12. Although, the petitioner has taken the grounds on merit also in his bail application yet he has mainly sought the grant of bail on account of his long incarceration of about 12 years with no hope of conclusion of the trial at an earliest.

13. As hereinbefore mentioned this court has gone through the evidence recorded at the trial so far which is of circumstantial nature, I hesitate to comment on the nature of the evidence at this awaited stage of the conclusion of the trial to prevent any prejudging in the matter.

14. While keeping the evidence adduced at the trial in mind, the another question for addressal of this court arises as to whether the accused having allegedly committed a heinous offence of murder is entitled to be enlarged on bail on the ground of his long incarceration of about 12 years. The matter has been the subject matter of the discussion before the Hon'ble Apex Court in a number of cases.

15. One of the earliest judgments on the concept of speedy trial was delivered by the Hon'ble Supreme Court in the case of Hussainara Khatoon vs. Home Secretary, State of Bihar, (1980) 1 SCC 81. In the said case, the Hon'ble Court deprecated the delay in commencement of trials, which would apply equally to long pendency of trials. The Court observed that un-necessarily prolonged detention in prison of under trials before being brought to the trial, is an affront to all civilized norms of human liberty. The Court observed as under:

"There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

So also Article 3 of the European Convention on Human Rights provides that:

"every one arrested or detained.....shall be entitled to trial within a reasonable time or to release pending trial."

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court

in *Maneka Gandhi v. Union of India*. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21 ? That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date....”

16. In *Supreme Court Legal Aid Committee vs. Union of India*, (1994) SCC 731, the Supreme Court dealt with the issue of delay in trial in the following manner:

“.....In substance the petitioner now prays that all under-trials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Words and Phrases, Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person

of "personal liberty" must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial....

Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab*¹⁰. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R. S. Nayak*¹¹, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us....”

17. Again, Umarmia vs. State of Gujarat, (2017) 2 SCC 731, the Supreme Court, while granting bail to an under trial who had been in custody for about 12 years, observed as under:-

“.....This appeal is filed against the judgment dated 16-6-2010 in Criminal Misc. Sr. No. 44 of 2010 by which the Court of Designated Judge (TADA) at Porbandar (hereinafter referred to as “the Designated Court”) rejected the bail application filed by the appellant under Section 439 CrPC and Section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as “the Act”). Crime No. I-43 of 1994 was registered under Section 154 CrPC for the offences committed under Sections 121, 121-A, 122, 123, 124-B read with Section 34 of the Penal Code, 1860, Sections 25(1-A), (1-B) and 25(1-AA) of the Arms Act, Section 9-B of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosive Substances Act and Sections 3, 4 and 5 of the Act.

2. The statement of one Suresh recorded under Section 108 of the Customs Act revealed that explosive substances, powder RDX boxes, bags containing firearms, 45 bags of weapons, 15 boxes of RDX and 225 pieces of silver ingots were smuggled into the country and taken to Zaroli and Dhanoli Villages of Valsad District. The first charge-sheet was filed on 12- 1-1995 in which the name of the appellant is found at Serial No. 1 in Column 2 which refers to persons who were absconding. The 11th supplementary chargesheet was filed on 6-6-2005 wherein it was mentioned that the appellant was arrested at 1700 hrs on 10-12- 2004.

10. After considering the submissions of both sides, we are of the opinion that the appellant is entitled to be released on bail for the following reasons:

A. The prior approval required under Section 20- A(1) of the TADA Act was not taken from the District Superintendent of Police before the FIR was recorded.

B .Admittedly, the appellant had been suffering incarceration for more than 12 years. C. Only 25 out of 192 witnesses have been examined so far.

D. There is no likelihood of the completion of trial in the near future.

E. Though there is a confessional statement of the appellant recorded under Section 15 of the TADA, the same cannot be looked into by us in view of the violation of Section 20-A(1) of the TADA Act.

11. This Court has consistently recognized the right of the accused for a speedy trial. Delay in criminal trial has been

held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See Supreme Court Legal Aid Committee v. Union of India [Supreme Court Legal Aid Committee (Representing Under trial Prisoners) v. Union of India, (1994) 6 SCC 731: 1995 SCC (Cri) 39] and Shaheen Welfare Assn. v. Union of India [Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366] .) The accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. [See Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] and Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118.

12. Though the appellant is involved in serious offences and has absconded for a period of 10 years before he was arrested in 2004, we see no reason to confine him to jail as he has already suffered more than 12 years in custody and the trial may not be completed in the near future. Taking note of the above, we grant relief of bail to the appellant subject to the following conditions.....”

18. In the case of Union of India vs. K. A. Najeeb, (2021) 3 SCC 713, a three Judge Bench of the Hon’ble Supreme Court, while considering the long incarceration as also the effect of rigour of Section 43-D(5) of the UAPA Act, observed as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as

the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

19. In yet another judgment in the case of Ashim alias Asim Kumar Haranth Bhattacharya vs. National Investigation Agency, (2022) 1 SCC 695, the Hon’ble Supreme Court observed as under:

“9. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW 1/de facto complainant has still not been completed and there are 298 prosecution witnesses in the calendar of witness although the respondent has stated in its counter-affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6-7- 2012 and has completed nine-and-half years of incarceration as an under trial prisoner.

10. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge him on bail.

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

20. Again, in the case of Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & anr. 2021 LiveLaw (SC) 376, the Hon’ble Supreme Court, relying up the ratio laid down in K. A. Najeeb’s case (supra), observed that no accused can be subjected to unending

detention pending trial, especially when law presumes him to be innocent until proven guilty. It has been further observed that even when statutory provisions expressly bar the grant of bail after a reasonably long period of incarceration, such stringent provision will melt down.

21. As hereinbefore mentioned the learned counsel for the petitioner Mr. A.M Dar, Senior Advocate referred to the judgment passed by the Hon'ble Apex Court in Saudan Singh vs. State of Uttar Pradesh (Criminal Appeal No. 308/2022) in which a bunch of petitions came to be allowed and the Hon'ble Apex Court was pleased to grant bail to the petitioners who were suffering from incarceration during different periods ranging from 5 to 10/15 years. The petitioner also has been suffering detention in the case FIR since lat about 12 years still the trial of the case is likely to take some more time to conclude.

22. The co-accused in the case FIR have already been enlarged on bail in the case.

23. The learned counsel for the petitioner during his arguments has also referred to a recent judgment of the Hon'ble Apex Court decided on 14.02.2025 in case titled Tapas Kumar Palit vs. State of Chhattisgarh Crl Appeal No. 738/25 decided on 14.02.2025 in which the Hon'ble Apex Court was pleased to enlarge the appellant to bail on account of his continued incarceration. It is profitable to reproduce the paras 5 to 15:

5. The appellant was arrested on the very same date i.e. 24th March, 2020. At the end of the investigation charge-sheet came to be filed.

6. The trial is in progress. Till this date the prosecution has been able to examine 42 witnesses. The prosecution intends to examine as many as 100 witnesses. We are conscious of the Order passed by us taking the view that once the trial commences and the witnesses are being examined then in serious crimes like murder, dacoity, rape, etc, the Court ordinarily should not exercise its discretion for the purpose of grant of bail, more particularly, looking into the evidence which has come on record.
7. However, this is a case in which the appellant is in custody as an under trial prisoner since 24th March, 2020. He has no other antecedents. The panch witnesses to the recovery panchnama have also turned hostile.
8. It's been now 5 years that he is in judicial custody. The learned counsel appearing for the State has no idea as regards the time likely to be consumed to complete the recording of the oral evidence.
9. In such circumstances, we are left with no other option but to order release of the appellant on bail. We do not undermine the seriousness of the crime that has been alleged.
10. However, many times we have made ourselves very clear that howsoever serious a crime may be the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.
11. Before we close this matter, we would like to observe as to why the Public Prosecutor wants to examine 100 witnesses. Who are these 100 witnesses? We are aware that it is the public prosecutor who could be said to be in-charge of the trial and he has to decide who is to be examined and who is to be dropped. But at the same time, no useful purpose would be served if 10 witnesses are examined to establish one particular fact.
12. The aforesaid results in indefinite delay in conclusion of trial. It is expected of the Public Prosecutor to wisely exercise his discretion in so far as examination of the witnesses is concerned.
13. Where the number of witnesses is large, it is not, in our opinion, necessary that everyone should be produced. In this connection, we may refer to *Malak Khan vs. Emperor* [AIR 1946 Privy Council 16] where their Lordships observed as follows at page 19:-

“It is no doubt very important that, as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of counsel for the prosecution and though a Court ought, and no doubt will, take into consideration the absence of witnesses whose testimony would be expected, it must judge the evidence as a whole and arrive at its conclusion accordingly taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses.”
14. In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing

that any other witness might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an under trial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of long trials on accused persons – who remain innocent until proven guilty – can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job or accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.

15. We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”

24. In the backdrop of the aforementioned discussion this court is of the considered opinion, that it may meet the ends of justice in case the petitioner-accused is admitted to bail in the case, subject to some reasonable terms and conditions.

25. Accordingly, the petition is allowed and the petitioner is directed to be released on bail subject to his furnishing of surety and personal bonds each in the amount of Rs.2/- lacs respectively to the satisfaction of learned trial court and the Superintendent of Jail concerned in which he is presently lodged. The bail order however, shall be subject to the following conditions:-

- i) In case the petitioner has a Passport he shall surrender the same before the trial court and shall not travel out of the Union Territory of J&K without permission of the trial court.
- ii) That he shall not cause any threat, intimidation or undue influence on un-examined prosecution witnesses so as to dissuade them from making their statements before the trial court.

- iii) That he shall remain punctual at the hearings of the trial case unless exempted for any hearing by the learned trial court.
- iv) That he shall not confront the family or relatives of the deceased until the conclusion of the trial.

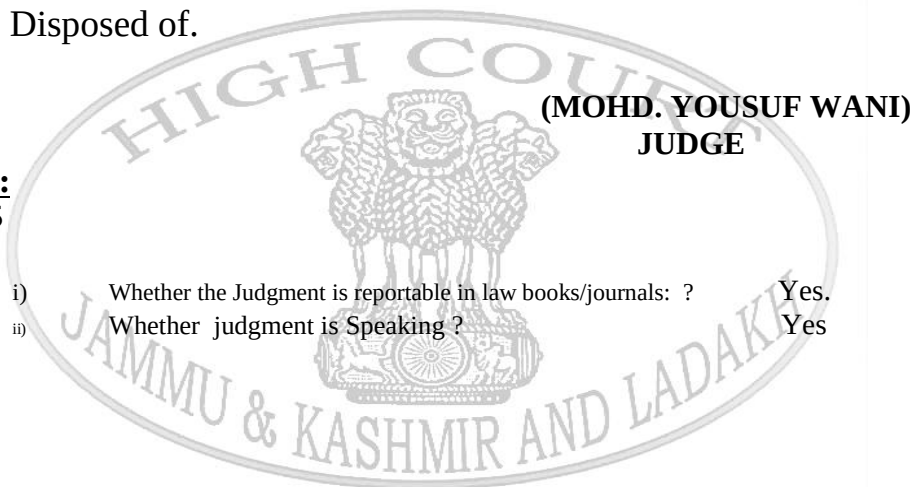
26. This court makes it clear that if the petitioner commits breach of any of the aforementioned conditions imposed by this court, the prosecution shall have right to approach this court seeking cancellation of bail.

27. Disposed of.

SRINAGAR:

19.08. 2025

"Ayaz"



- i) Whether the Judgment is reportable in law books/journals: ? Yes.
- ii) Whether judgment is Speaking ? Yes